the weekly Standard

AUGUST 10, 2009

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OBAMA'S POLITICIZED JUSTICE DEPARTMENT
JENNIFER RUBIN

Weighing America and Finding It Wanting

ANDREW FERGUSON on David Kessler's anti-obesity crusade

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You deserve a factual look at . . .

Mr. Netanyahu's Offer (I)

Would it bring peace to the tortured Middle East?

In a complete turnabout from previous positions, but probably also yielding to enormous pressure by President Obama, Israel's Prime Minister "Bibi" Netanyahu has declared his willingness to accept a Palestinian state.

What are the facts?

A generous offer. Since the "two-state solution" has long been declared to be the Holy Grail of the Palestinians, one would have expected that Mr. Netanyahu's announcement be greeted with cheers and hosannas. That, however, not surprisingly perhaps, was not the case. In fact, the Palestinians and all others involved declared it to be an insult and a "non-starter." The principal objections were that Mr. Netanyahu insisted that the newly created Palestinian state would have to be totally demilitarized, and that its air space would be available to the IAF (Israeli Air Force); that Jerusalem would remain undivided as the capital of the Jewish state; that the "Palestinian refugees" would, if they so desired, be returned to the newly formed state and not to Israel; that the Palestinians acknowledge Israel as the state of the Jews; and, finally, that he did not commit for the "settlements" to be dismantled. We shall address some of these objections in this message, the rest in a future message.

> "As Abba Eban, Israel's former Foreign Secretary put it: 'The Arabs will never miss an opportunity to miss an opportunity.'"

The "Settlements." Judea/Samaria (the "West Bank") is the ancient Biblical homeland of the Jewish people. This area is part of the Palestinian Mandate, which was declared by the Balfour Declaration and by the mandate of the League of Nations, to be the homeland of the Jewish people. After the 1948 War of Israel's Liberation this area remained in possession of the Kingdom of Jordan, which declared sovereignty over the area. The only possible rationale for the conclusion that this area is Palestinian land is that it is encompassed by the 1949 armistice line. There is absolutely no other reason. This area has never been Palestinian land. In fact, never before the creation of the State of Israel has there ever been a Palestinian people or a Palestinian country anywhere in the long course of human history. The Palestinians were never until recent times in any control over the area. At the very most, the area could be described as "disputed." In fact, a very good case could be made that Jews have a better right than the Arabs to live there. What a shame that even the leaders of our country cannot see this fundamental truth. And don't let's forget that over one million Arabs live in Israel unmolested and nobody gets exercised about that.

Demilitarization. Not so long ago, Israel unilaterally evacuated every last Jewish family from Gaza. One would have hoped that the Palestinians, grateful for being rid of the hated Jews and no longer having to suffer their presence, would have shown their gratitude for that "liberation." Instead, almost from the very first day, they bombarded Israeli cities with thousands of rockets. Eventually, the patience of Israel snapped and it invaded Gaza to put a stop to this outrage. It has to be clear to all that having had such bad experience with Gaza, Israel is fully justified to expect that if statehood were ultimately granted to the Palestinians, and if demilitarization were not imposed and strictly supervised, the Palestinians of the "West Bank" would be equally inclined to attack Israel on a daily basis. Instead of being confronted by the insular Gaza, Israel would be surrounded totally by those who are sworn to destroy it. Full demilitarization would have to be a key requirement of any Palestinian statehood. Without it, virtually all of Israel – its population centers, its industries, its military installations and its international airport – would be under the gun. Life in Israel would be virtually impossible. How could anybody possibly think otherwise?

Return of the "Refugees." During the 1948 War of Liberation, about 650,000 Arabs, goaded by their leaders, fled the nascent state of Israel. They and their descendants wish to "return" to Israel. That is a bizarre request. The principal purpose of a Palestinian state would obviously have to be the ingathering and settling of the "Palestinian refugees" and not to foist them onto Israel. Injecting them into Israel would undermine the Jewish state and smooth the path to its destruction. And that is, indeed, the rub. The principal intent of the Arabs is not the creation of a state, but, as they repeat over and over, the destruction of Israel, which they call the "cancer on the Arab body." And don't let's forget that about 800,000 Jews, who escaped barely with their lives from Arab countries during the War of Liberation in 1948 and during the Six-Day War in 1967, were quickly absorbed into the state of Israel and are now at least one-half of the total population. The Arabs, in contrast, have kept their "refugees" in miserable refugee camps for the last 60+ years, on the dole of the world – mostly that of the United States.

There is little likelihood that Mr. Netanyahu's generous offer, however it might ultimately be modified, will be accepted by the Arabs. Because, if that were the objective, they could have had their own state for over seventy years. But whatever was offered was never sufficient. As Abba Eban, Israel's former Foreign Secretary, so well put it: "The Arabs will never miss an opportunity to miss an opportunity." Sadly, therefore, there is little question that Mr. Netanyahu's generous offer of a separate state for the Palestinians will again be rejected – most likely even being followed by another "intifada."

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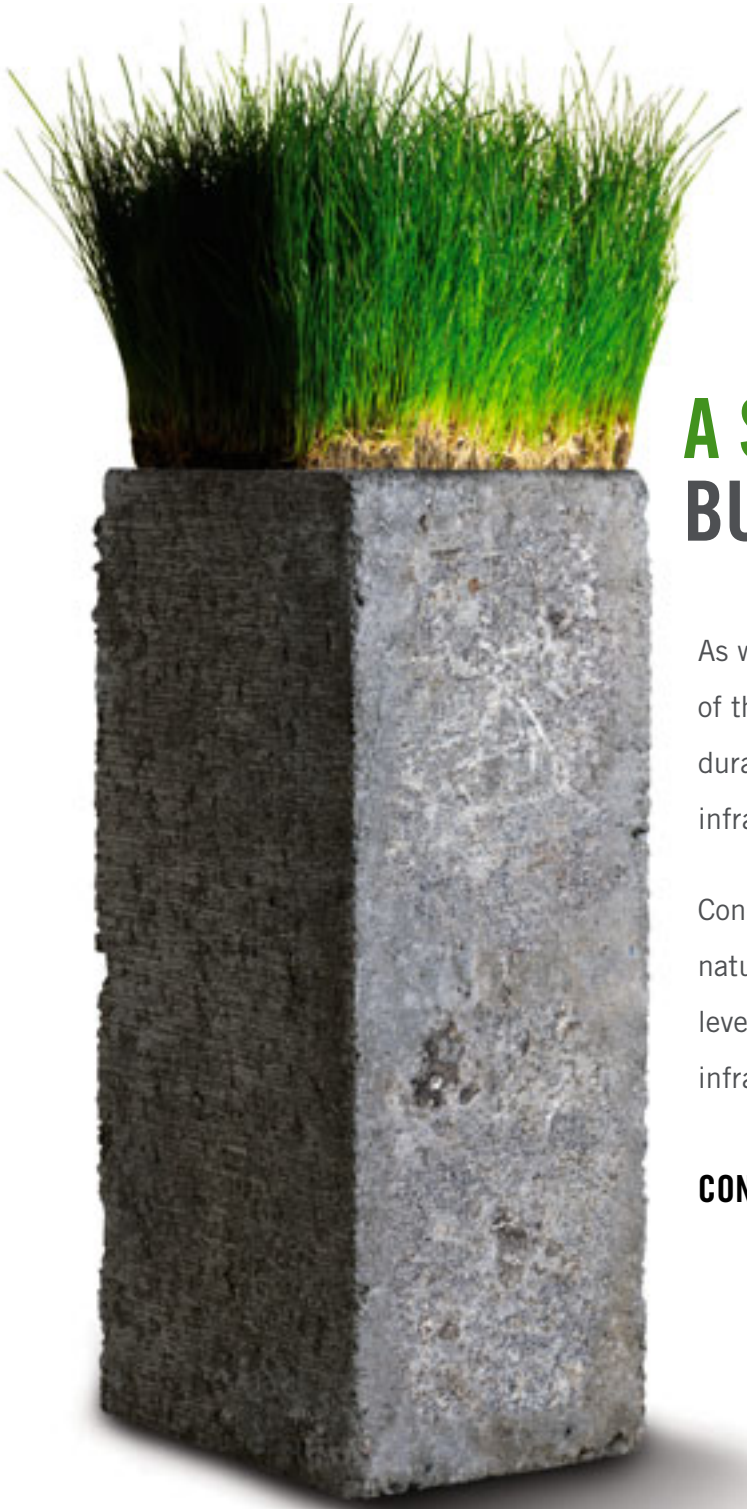

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BPA INTERNATIONAL

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Capitol Offense

The *Washington Post* has been having fun lately with a recent Senate vote to allow visitors to bring guns into national parks. This has now become a recurring feature in the political sideshow: Some state or locality passes a concealed weapons law, or Congress votes to allow citizens to bear arms in public places, and the editorial pages/op-ed columns of America predict an epidemic of Wild West violence featuring members of the National Rifle Association—which, of course, never happens.

For example, in the recent national parks debate, *Post* columnist E.J. Dionne Jr. weighed in with what he must have thought was a devastatingly satirical observation on the subject: He proposed that the House and Senate eliminate various safeguards in place on their own premises—metal detectors, Capitol policemen, and so on—and put guns in the hands of legislators.

> Why not let Sen. John Thune (R-S.D.) pack the weapon of his choice on the Senate floor? Thune is the author of an amendment that would have allowed gun owners who had valid permits to carry concealed weapons into any state, even states with more restrictive gun laws. . . . Judging by what Thune said in defense of his amendment, he'd clearly feel safer if everyone in the Capitol could carry a gun.

Speaking, presumably, of citizens who go to the trouble to acquire a valid permit for their firearms, Martina Leinz of the Brady Campaign to Prevent Gun Violence picked up on Dionne's theme: "An increasing number of dangerous individuals," she wrote to the *Post*, "are walking around with increasingly dangerous weapons in increasingly more places. . . . Apparently lawmakers are more comfortable with hypocrisy than they are with the risks of gun violence that the rest of us must face."

Of course, as The Scrapbook hastens to add, there is another side to this non-issue, and James A. Dueholm of Washington, D.C., wrote to the *Post* to make the obvious observation that "it's not likely that a licensed gun owner would tote a gun to a national park in order to shoot a stranger. [Defending oneself against a High Sierra grizzly is a likelier scenario, The Scrapbook would speculate.] It's quite possible that a troubled, vengeful, deranged, or publicity-seeking person would bring a gun to the Capitol for use against a member of Congress."

To which The Scrapbook can only add: How soon they forget!

On March 1, 1954, four Puerto Rican terrorists walked into the visitor's gallery of the House of Representatives, opened fire on the (nearly empty) House floor, and shot and seriously wounded five members of Congress: Reps. Alvin Bentley (R-Mich.), Clifford Davis (D-Tenn.), Ben Jensen (R-Iowa), George Fallon (D-Md.), and Kenneth Roberts (D-Ala.). The four gunmen, unharmed themselves, were subsequently tried and condemned to death; but President Eisenhower commuted their sentences to 70 years in prison, and Jimmy Carter released them in 1979 in exchange for American agents imprisoned in Cuba.

It is possible, but by no means certain, that if any House member had been armed that day they might well have limited the number of their colleagues who were shot. It is also possible that the letter writer is unaware of this incident in the annals of Congress. What impresses The Scrapbook, however, is the apparent ignorance of the *Post* about this dramatic incident in the recent history of the nation's capital—or worse, its knowledge of the incident, but deliberate decision to, um, conceal it in the debate. ♦

Ernest Lefever, 1919-2009

Ernie Lefever, an occasional contributor to these pages, liked to call himself the original neocon. He was reared by Christian pacifists in Pennsylvania and ordained in the Church of the Brethren, a sect with roots in the radical Reformation. But a view he came to see as essentially utopian was inadequate to the brute realities of World War II. A visit to Bergen-Belsen shortly after the war crystallized his recognition that some evils must be opposed by force.

Ernie got his Ph.D. in Christian ethics at Yale, where he wrote on Reinhold Niebuhr, whose just war theory he came to admire. Ever after, a determination to resist airy moral preening and pursue instead achievable goods drove his thought about religion and politics.

And so it was that the think tank he founded in 1976—the Ethics and Public Policy Center, which became his finest legacy when he died last week at 89—was the platform for a sustained critique of liberal Protestantism corrupted by casual Marxism. Two of Ernie's 20 books were devastating treatments of the foreign policy prescriptions of the World Council of Churches.

EPPC soon was the only home in Washington for a biblically informed (Jewish and Catholic as well as Protestant) analysis of foreign policy generally. Here, the center's signal

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achievement was, in the words of its second president, George Weigel, "a clear-eyed view of the moral squalor of communism." At a time when even the president of the United States was pooh-poohing the "inordinate fear of communism," Ernie "understood," as Weigel put it, "that what was really wicked about the Soviet system was that it reduced people to living a lie."

Another colleague, Michael Cromartie, remembers Ernie as a meticulous editor, fastidious about carrying an argument only as far as the facts would bear. Once when the center was hurting financially, Ernie turned down flat the suggestion of a fund drive. "I don't do fund-raising letters," he told Cromartie. "There's too much of a temptation to hyperbole," embellishing past accomplishments or present plans.

Washington being what it is, Ernie's name, nevertheless, was in the news, and so is remembered in some quarters, principally for his withdrawal of his nomination to the top human rights post in the Reagan State Department over a savagely hyped appearance of conflict of interest. The center had sponsored a (never-published) study whose findings were favorable to the interests of the Nestlé company, an EPPC donor. The politics of personal destruction has been around a long time.

No surprise there for the Christian realist. With thanks for Ernie Lefever's life, for talents well invested in an institution that lives after him, and with condolences to his magnificent wife Margaret and their family, may he rest in peace. ♦

Sentences We Didn't Finish

'In 1975, at All Soul's in Oxford, I participated in Leszek Kolakowski's seminar on Pascal. It fell to me to report on Lucien Goldmann and his celebrated interpretation of Pascal, and more generally of Jansenism, as the expression of the perplexity of a particular social class in seventeenth-century France, the *noblesse de robe*, which responded to its increasing isolation from the king, in the years of the emergence of monarchical absolutism and its powerful bureaucracy, with the tragic mystery of the *deus absconditus*, the hidden God. Here, I supposed, was a scholarly and unpolitical and humanistic Marxism; and I was encouraged to learn that Goldmann was never a Stalinist, or even . . . " (Leon Wieseltier, *New Republic*, August 12). ♦

Always Look on the Bright Side

'Slide in Home Prices Is Slowing Down: For the fourth consecutive month, there was modest improvement in May in the rate prices are falling . . ." (*New York Times*, July 28). ♦

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Casual

No Thank You, Mr. President

When I labored at the *New Republic*, some 35 years ago, the TRB column was written by an amusing man named Richard Strout, who had arrived in Washington in 1920 to write for the *Christian Science Monitor*, had been moonlighting as TRB since 1943, and had three abiding pet peeves.

One was his belief that a parliamentary system was demonstrably preferable to presidential government; another was his conviction that the United States desperately needed a British/Canadian-style national health service; and the third was his indignation at the declining number of presidential press conferences.

In four terms as chief executive, he would remind readers periodically, Franklin D. Roosevelt had conducted an impressive 998 press conferences, while it had been weeks, even months, since Nixon/Ford/Carter had met with reporters! The implication was that the public was denied essential insight into presidential thinking.

I had some opportunities in those days to test Strout's thesis, and came away from the White House press room with the (lifelong) conviction that there is no less rewarding enterprise than asking questions of a president or his press secretary.

For whatever reason, press secretaries are determined to deflect all inquiries to their boss's advantage: Admissions of error or indecision or ambiguity are strictly forbidden, and even catastrophe is packaged in bright paper with a pink bow. And presidential press conferences are just as bad. President Obama, for instance, calls on correspondents from a short list of favorites, who ask questions which (to all appearances) might be prearranged as well. This strikes me as a procedure more suitable for journalists who covered Mussolini in his heyday, but the tough-as-nails White House press corps seems content. I can't imagine what Richard Strout would think.

Yet, even in 1975, I perceived that Strout's comparisons with FDR made little sense. If you repair to the transcripts of those 998 press conferences—all available in the volumes of Roosevelt's presidential papers—you will discover a vanished world. Reporters were summoned en masse into the Oval Office, no recordings or newsreels, and both questions and answers were off the record.

HAL MAYFORTH

Roosevelt tended to joke with his questioners, and sometimes deflected inquiries with repartee or pointed anecdotes. But he was also, by modern standards, startlingly candid, and a smart journalist really could discern what the president was thinking about a particular issue.

Somewhere along the line—I would guess with the introduction of television under Eisenhower, and the Kennedy/Johnson use of TV "prime time"—the nature of the beast evolved. By the Nixon era presidential press conferences were not only small-caliber ceremonies of state—with Marine guards, East Room splendor, and a complicated etiquette for asking questions—but parliamentary-style showdowns between a hostile press corps and defensive commander in chief.

There were other factors as well: The enhanced social status of newspapermen had inflated their sense of themselves as a fourth branch of government, and the Woodward-Bernstein school of journalism locked reporters into perpetual combat with presidents, Republicans especially.

Add to this the preening nature of TV correspondents, the human instinct to perform onstage, and the Ruritanian character of the modern executive mansion—picture Bill Clinton striding down a red-carpeted-and-chandeliered corridor to meet the press—and you have a comic-opera institution that has long since lost whatever utility it once had.

As I say, those rare occasions when I traipsed over to the White House struck me, even in the fullness of youth, as a waste of time. Press secretaries, and especially assistant press secretaries, were usually determined to say as little as possible, and presidents' responses were entirely predictable. I remember once entertaining a female colleague by anticipating, *sotto voce*, every phrase uttered by Jimmy Carter in response to some hapless inquiry.

The only constant, then and now, was the baleful presence of Helen Thomas. She was not yet the chronological dean of the White House press corps, but even in the early 1970s, there was a sense that she had been hanging around too long, clinging to her sinecure with a swiftly declining wire service (UPI).

Age and a deluge of honorary degrees have given Helen Thomas the confidence to hector presidents. But my everlasting memory of her is the wintry night a fun-loving GI stole a helicopter from Fort Myer and landed it on the White House lawn. I assumed alcohol was to blame; Helen announced that this was the first stage of the Pentagon coup to keep Richard Nixon in office.

Philip Terzian

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Utterly Criminal

Imagine my shock and horror when I saw you had smashed a piece of Waterford crystal for the cover of your May 11 issue, "Ireland Shatters." We of Irish persuasion must view such destruction as utterly criminal. I couldn't let my wife see that cover. She would have been in your office the next morning, nine iron in hand, looking to tee up your photographer.

If you need to replace your wantonly destroyed Waterford, we have access to a Marine PX near you that carries Waterford at affordable prices. If you continue to feel the need to smash something, call me and I'll be glad to purchase a bust of Teddy Kennedy for you to hammer to your heart's delight.

William Doane Watkins
River Edge, N.J.

Just Say No To Brüno

The Weekly Standard would do well to change John Podhoretz's credit line from "movie critic" to "movie reviewer" in light of his review of *Brüno* ("Sacha Kidder," July 13). A real critic would have at least pointed out that real satire need not be dirty to be effective and entertaining. Podhoretz mentions a major studio enabled an R rating instead of the deserved NC-17. No critical comment? How about at least suggesting we not honor the creators of stupid filmmaking with our dollars? A real critic would have the guts to call trash by its name.

Neal East
Centennial, Colo.

The Sound of Silence

Your parodies are always splendid, but the one of *Time*'s Joe Klein (June 29/July 6) takes the prize. His next assignment of investigative reportage should be a Trappist monastery for about 20 years. No questions, no answers, just silence. I should look forward to his report and your parody of it.

James G. Baird
Woodstock, Ga.

Still in the Arena

Ryan Anderson suggests that the Bible is an inadequate guide to the basic questions concerning human dignity ("In the Arena," July 20): "*What* is made in the image of God ... *how* we know (for the Bible doesn't tell us so); and *when* human persons begin."

To the last of these questions, the Bible provides a clear answer, but it has been ignored, like much else that God has told us, even by those who make a

pretense to knowledge of His word. He tells us right up front, in Genesis 2:7: "And the Lord God formed man of the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul."

Even the Common Law had it right, but we think we know better, having—in our scientific presumption—photographed and observed, in some unique and particular setting, "the moment of conception"—which, in fact, no one, except possibly God, routinely observes.

Yet God nevertheless told us long ago that man becomes "a living soul" when he receives his first "breath of life." And is this not the moment when joy breaks forth, when the long wait is over, when we come to know of the live birth of a new human person? The rest of the discussion increasingly gives way to misguided dumbness: Can fetuses inherit property? Shall we extend legal standing to animals?

Jay Seavy
Manchester, N.H.

New Deal, Same Problem

I gather from Charlotte Allen's excellent review of Burt Solomon's *FDR v. The Constitution* ("A Man, a Plan..." August 3) that Solomon's book deals too breezily with the question of whether the Court does or does not adhere to the Constitution. The larger question is whether we shall continue to have a Constitution or whether, on the contrary, we shall, blustering with hyperbole about one "crisis" or another, be led through a kind of *dementia praecox* to forget the Constitution altogether, so that a thing becomes "unconstitutional" if it is distasteful to present fashion. We have forgotten that the definition of modern government is limited government, and the definition of government of the Union is that it is more limited than that of the states.

It is good to be reminded just now by Allen, and by Solomon, and by many others, of the New Deal. It would not surprise me if we should soon hear of a bill in Congress that would concern itself with potholes in neighborhoods peopled by the designated disadvantaged. The answer to Obamacare is not an alternative bill. It is to draw a deep breath and to ask what business it is of Congress to fix health care. Sometimes the truly difficult is the truly necessary.

Richard G. Stevens
McLean, Va.

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Fairy Tales

You may have seen ads telling you of watches of which only a few were laboriously handmade by "little old watchmakers" somewhere in Germany or Switzerland or watches that will lose only one second in a million years (you should live that long!), that wars were fought over them and that recently one of them was sold for over $1 million by one of the great auction houses.

A Unique and Wonderful Watch

We won't insult your intelligence with such fantastic stories. But we will tell you one very important and sobering fact: Virtually all those fancy watches have mechanical movements. And mechanical movements have scores of tiny parts. Their wear and tear are mitigated by jeweled bearings. But that will help only for so long. Ultimately – and that sometimes may be as little as a year – these movements will wear out and that is the end of them. Because it is not possible or practical to repair them you have to throw those watches away or keep them as a reminder of your folly.

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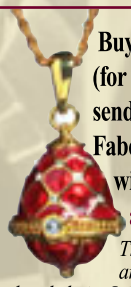

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the weekly Standard

The Stimulus Lesson

Let's stipulate that Congress may yet pass some sort of health insurance overhaul by the end of the year, that the future in politics is never a straight-line projection from the present, that President Obama is a savvy and charismatic guy, that Democrats control both houses of Congress, and—yadda, yadda, yadda—that the climate for "reform" has never been better. Still: One can't help noticing that the more Obama talks about his health plan, the less the public supports it. Why?

Partly because voters have connected the dots between the American Recovery and Reinvestment Act of 2009 and Obamacare. They have seen the meager results and huge deficits that the stimulus produced, and can't come up with a good reason to embark on yet another government shopping spree. For the public, the stimulus was bad economic medicine. Now Obama wants it to try another, unapproved experimental drug.

Nor do voters think health care is an urgent problem. The vast majority are satisfied with their insurance and see health coverage as peripheral to larger concerns such as jobs, the economy, and the federal debt. In last week's *Wall Street Journal* poll, for example, health care ranked third in the list of the public priorities, around where it typically resides.

The big takeaway from the NBC News/*Wall Street Journal* survey, of course, was that pluralities disapprove of the way Obama is handling "health reform," 46 percent to 41 percent, with 47 percent calling Obama's plan an—uh oh—"bad idea." Buried in the *Journal*'s write-up, though, was the equally bracing news that support for the stimulus has fallen to 34 percent. Only a third of the country, in other words, is willing to say that the recovery plan is doing its job. Meanwhile, many more people—43 percent of the respondents in the *Journal* poll—say the trillion-dollar-with-interest emergency spending bill was another "bad idea."

They have plenty of reasons to say so. In the months since February 17, when Obama signed the stimulus, the economy has hardly improved. Unemployment stands at 9.5 percent, one-and-a-half percent higher than the White House predicted in January. The money that the White House assured us had to be spent in a "timely" manner to "get our economy moving again" has hardly been spent at all: According to the official Recovery.org website, as of July 24, only about a tenth of the stimulus—$70.2 billion, to be precise—had been "paid out." The 2009 deficit? It rose to $1 trillion in June. Gravity won't be enough to pull it back to earth.

Saddling the budget with a massive deficit is only one of the ways that the stimulus hurt Obamacare's prospects. The White House missed a huge opportunity last winter to recast American politics and put Republicans in a bind. If Obama had forced Nancy Pelosi to include GOP ideas such as a payroll or corporate tax cut or increased defense expenditures in the final recovery bill, he would have guaranteed bipartisan support, and both parties would bear some responsibility for the stimulus and its consequences. Instead Pelosi and Harry Reid rejected the conservatives' good ideas and turned the stimulus into one giant early Christmas present for every Democratic special-interest group in the country—and a stocking full of coal for those bad little Republicans.

The stimulus was a huge wealth transfer from future taxpayers to today's alternative energy and social service industries. The Republicans thus had no reason to support it, and the stimulus passed without a single House Republican vote. Only three GOP senators voted for the bill—and one of them has since become a Democrat. A little surprisingly, considering Obama's high numbers in February, none of the anti-stimulus Republicans paid any real price for their opposition. This freed them to criticize both the stimulus and Obamacare, and to argue that the administration has done little to promote economic recovery.

The stimulus also lulled the White House into a false sense of security. The recovery act was the centerpiece of Obama's economic agenda; it is really the only tangible domestic achievement of his presidency to date; and with it passed, the president clearly felt he could move on to other priorities, such as the budget, cap-and-trade, health care, and education policy. Cap-and-trade was punted over to Congress, where on June 26 the House passed a bill that has no chance in the Senate. The budget and education debates await us in the fall.

That left the health plan, and Obama has campaigned vigorously for its passage, setting deadlines that will not be met, and criss-crossing the country in a so-far unsuccessful attempt to rally support. As he goes about his business he must be scratching his head in puzzlement. Why isn't the message gaining traction? He needn't look any farther back than February, when he signed a bill into law that's become a political liability, and hasn't fixed the economic crisis that brought Obama to office. He didn't know it at the time, but Obama's signature would bring into being an anti-deficit constituency that would confound his ambitions to expand government, and sever the connection between his rhetoric and economic reality. And thus the stimulus paved the way for the failure of Obamacare.

—Matthew Continetti

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He's No Ronald Reagan

Obama's bait-and-switch agenda.

BY PETER BERKOWITZ

THOMAS FLUHARTY

On July 29, 1981, barely six months into his presidency and in the face of an economic crisis of historic proportions, Ronald Reagan succeeded in persuading both houses of Congress to pass dramatic tax cuts that set the stage for nearly three decades of vigorous economic growth. In doing so, he achieved a goal he had long and publicly pursued. In his most watched and influential speeches, Reagan had consistently called for just such substantial tax cuts. Indeed, he had made them a centerpiece of the conservative governing philosophy he had propounded on the national stage for going on two decades.

Barack Obama, barely six months into *his* presidency and in the face of another economic crisis of historic proportions, has unsuccessfully pressed Congress to pass, before its summer recess, comprehensive and costly health care reform that he contends is critical to the nation's long-term social and economic well-being. But neither this nor the other complex and far-reaching proposals Obama has sought to enact with heedless speed can readily be derived from his most influential speeches. Indeed, these measures, all dramatically extending federal power, are at odds with the governing philosophy, at once progressive and moderate, that he assiduously put before the public.

One can quarrel about the efficacy and justice of the Reagan tax cuts and the Obama health care expansion, but one thing is plain from the political styles that these presidents have brought to the passage of their signature domestic legislation. Reagan's forthright approach is more consistent with democratic norms and the presuppositions of a free society than Obama's hide-the-ball tactics.

In October 1964, Reagan delivered a speech on national television sponsored by Barry Goldwater's campaign that placed the aging actor on the path to the presidency. All the familiar elements are present in "A Time for Choosing." To preserve "the freedoms that were intended for us by the Founding Fathers," Reagan argued, it was imperative to rein in government by cutting taxes and curbing spending, and to defeat rather than accommodate communism.

In July 1980, in his acceptance address to the Republican National Convention, Reagan declared that limiting government to preserve individual freedom was his paramount domestic goal, and he repeated his campaign promise to achieve it by passing "a 30 percent reduction in income tax rates."

And in January 1981, in his first inaugural address, confronting high inflation, high unemployment, and high taxes, President Reagan famously proclaimed that "in this present crisis, government is not the solution to our

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problem; government is the problem." Seeking (unsuccessfully, it turned out) to avoid misunderstanding, he insisted, "It's not my intention to do away with government" but "rather to make it work." That required "removing the roadblocks that have slowed our economy and reduced productivity." A critical first step was "to lighten our punitive tax burden" inherited from the Carter era.

So when, in late July 1981, the House and Senate passed tax cuts that averaged about 25 percent for individuals and included substantial reductions for business, no competent observer could claim to be surprised, except perhaps by the new president's political skill in assembling congressional majorities despite the Democrats' numerical superiority in the House and the skepticism of leading Republicans in the Senate. To be sure, over the course of eight years in office Reagan fell short of his aims, failing to reduce the size of government and spending and piling up large deficits. But there was never confusion about what those aims were.

In contrast, there seems to be considerable confusion about President Obama's aims, and plenty of competent observers were flabbergasted shortly after he took office when, notwithstanding an economic crisis that he himself declared the worst since the Great Depression, he called for and signed into law a $787 billion stimulus package short on stimulus spending, high on transfer payments, and larded with pork aimed at pet Democratic party special interests; rolled out a 2010 budget that, according to Congressional Budget Office projections, would quadruple the 2008 Bush deficit that candidate Obama had decried as intolerable; and announced his determination to pass comprehensive health care reform before year's end although the flaws in the current health care system had nothing to do with the toxic assets and frozen credit markets afflicting the economy.

To be sure, there could be little doubt that Barack Obama was a partisan and progressive Democrat. He explicitly defined himself as a progressive in his 2006 bestseller, *The Audacity of Hope*, and his voting record in the Illinois State Senate and during his brief tenure in the U.S. Senate was decidedly left-liberal.

But in *The Audacity of Hope*, where he elaborates his understanding of constitutional principles and contemporary politics, and in his highest-profile speeches, he presented himself also as a moderate, one who understands that politics is the art of the possible, that principles must be applied with a sense of proportion, and that progressives have blind spots and conservatives sometimes speak the political truth.

In the electrifying keynote address at the 2004 Democratic National Convention through which he introduced himself to the nation and launched himself toward the White House, Obama deftly blended progressive and moderate notes, declaring that "people don't expect government to solve all their problems," but they do expect it to "make sure that every child in America has a decent shot at life and that the doors of opportunity remain open to all." He endorsed John Kerry's belief "in an America where all Americans can afford the same health coverage our politicians in Washington have for themselves." But he said nothing about government-run insurance. And he offered an eloquent appreciation of the unity that underlies competing perspectives on morality and politics in America, affirming that "there's not a liberal America and a conservative America; there's the United States of America."

In his 2008 Democratic National Convention acceptance speech, Obama highlighted the need for America to be more decent, generous, and compassionate. Hinting at the scope of his progressive ambitions, he declared that "now is not the time for small plans." But his promise of "affordable, accessible health care for every single American" was not accompanied by any mention of the massive government intervention in the economy that he has sought to deliver. By keeping his big plans for health care brief and vague and embedding them in a speech that celebrated individual freedom, hard work, personal sacrifice, and the opportunity, entrepreneurship, innovation, and growth that free markets bring, Obama, moreover, encouraged a rapt nation to think that any big plan for health care reform that he might back would give the market its due and reflect bipartisan ideas and support.

Then in his Inaugural Address six months ago, Obama again invoked "big plans." But he modestly limited himself to calling for raising health care's quality and lowering its costs. And again he honored conservative sensibilities and indicated an inclination to balance competing considerations by praising the American commitment to individual freedom and noting that the market's "power to generate wealth and expand freedom is unmatched."

In short, Obama's most carefully calculated words gave reason to believe that the candidate of hope and change, who proclaimed his intention to transcend partisanship, would seek health care reform that proceeded pragmatically, respecting market forces and building consensus. His most watched speeches certainly provided cause to discount any suggestion that he would exploit a severe recession to centralize government control of nearly one-fifth of the American economy or that he would support health care legislation that rushes to expand coverage while neglecting the impact of such legislation on health care quality and costs.

Recently, the Democratic party-appointed head of the Congressional Budget Office created a furor by testifying to Congress that Obama's big plans for health care reform will increase costs and may prove unsustainable. His assessment, however, was incomplete because it did not take into account the costs to democratic self-government of the cynicism bred and the trust eroded by a president who increasingly appears to have deliberately obscured the principles and policies according to which he intended to govern. ♦

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The Next Worst Thing

As Obamacare fails, the president turns to Plan B.

BY FRED BARNES

Watch out for Plan B. It's President Obama's fallback position on health care reform. It's Obamacare without the most controversial part, the creation of a government-run, "public" health insurance plan open to all comers at cut rate. And Plan B is something that Obama and the health insurance lobby both agree on.

Plan B is no day at the beach for health insurers. By imposing an exhaustive array of regulations and installing a powerful national health commissioner, it would turn health insurers into public utilities. They'd be assured a small profit, but competition among insurers would be gone and bureaucrats would be in charge.

Why would America's Health Insurance Plans (AHIP), the fancy moniker of the health insurance lobby, agree to this? Survival. They're reconciled to a sort of plea bargain to avoid the death penalty—that is, the government-run plan, which more likely than not would drive them out of business and lead to a single-payer health insurance system like Canada's.

To avoid this, AHIP is now supporting two provisions that insurers with good reason have long opposed. They've dropped the right to turn down anyone with a preexisting ailment and agreed to something called "guaranteed issue and renewal." It means they'll insure anyone basically forever.

To tout their new position, AHIP is running a 30-second TV ad. The spot begins with gloomy-looking people and lugubrious music, then switches to happy folks and sweeter music as the announcer chirps:

> Illness doesn't care where you live or if you're already sick or if you lost your job. Your health insurance shouldn't either. So let's fix health care. If everyone's covered we can make health care as affordable as possible. And the words preexisting condition become a thing of the past.

AHIP's only demand—besides no government-run plan—is that everyone be required to buy insurance, the so-called individual mandate. Since Plan B would hike the cost of coverage, insurers would lose money unless the market is enlarged. They want dropouts who insist on being uninsured held to a minimum (they'd have to pay a penalty under Plan B). No problem there. Obama and congressional Democrats favor an individual mandate anyway.

As you might expect, there are many, many problems with Plan B. Its first impact would be on health insurers. All but the largest five or six of 1,300 insurers across the country would be out of luck. Since Plan B would reduce the profits for insurance companies, and those with smaller margins—namely, regional, state, and local insurers—prob-

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ably wouldn't be able to compete.

"It's another chapter in the book on crony capitalism," says Republican representative Paul Ryan of Wisconsin, who first described Obamacare 2.0 as "Plan B." "The government erects barriers to entry against the smaller and most innovative insurance companies and leaves the big, established firms in place."

Insurers would be allowed to offer new policies after 2013 only if they joined a government-operated "exchange." And the policies would have to include a minimum—and more extensive and expensive—set of benefits. This would deny smaller firms their competitive advantage of offering insurance packages with fewer benefits, specially tailored for a client's needs.

Ryan raised this point recently during a hearing of the House Ways and Means Committee, asking about a small Milwaukee insurer. The answer he got was unequivocal. The firm couldn't offer new policies outside the exchange.

The biggest impact of Plan B would be on all of us, assuming it retains most or all of the regulatory requirements and details of Obamacare. There would be victims and beneficiaries. As insurers go out of business, people would lose the coverage they've chosen. Young people, the healthy ones, would suffer even more. They'd have to pay far more for their coverage. Cheap catastrophic plans and cost-saving health savings accounts would be unavailable. By paying more, those in their 20s and 30s would subsidize the old and sick.

With all the new benefits—for mental health treatment and "professional services" and "well baby/child" services—the total cost of health insurance is bound to soar. The poor and uninsured will need a subsidy. Caps on out-of-pocket expenses will increase the cost of insurance. And so on. The price will have to be paid through higher premiums and tax hikes.

The willingness of the health insurance lobby to roll over on everything but a government plan hasn't gained them favor with Obama or congressional Democrats. The president still casts insurers as villains, arguing regulations are needed to make sure people "are treated fairly and insurance companies are held accountable."

House speaker Nancy Pelosi is hysterical on the subject. She criticizes the insurance firms for opposing the "public" plan, without acknowledging their survival is at stake. "It's almost immoral what they are doing. Of course they've been immoral all along in how they have treated the people that they insure."

Pelosi, who's often oblivious, will come around. From her standpoint and Obama's, Plan B is the next best thing. Obama understands this. It's the rest of us who'd better object. For us, Plan B is the next worse thing. ♦

The Soccer Players' Revolt

It turns out that tax policies have on-the-field consequences. BY JONATHAN V. LAST

The English Premier League has dominated European soccer in recent years. Nine of the last 12 Champions League semifinalists have come from the Premier League, and an English team has been in the final for each of the last five years (two played each other for the trophy in 2008). The Premiership's top teams—Manchester United, Arsenal, Chelsea, and Liverpool—are four of the sport's ten glamour franchises, and the league is easily soccer's richest. Yet over the last few months, star players have been rejecting offers from the Premier League hand over fist.

In January, Manchester City made a £100 million offer for the Brazilian midfielder Kaká. He spurned the overture in order to stay at AC Milan, but then in early June accepted a £68.5 million transfer to Real Madrid. Then Manchester United sold Christiano Ronaldo to Real Madrid. Ronaldo, the highest-paid player in soccer history, had requested the trade and calls playing in Spain "a dream." Looking to fill the goal-scoring gap, United tried to lure the Lyon striker Karim Benzema. In July, Benzema went instead to Real for a £30 million transfer. Desperate to fill the hole, United extended a £25.5 million offer to Barcelona striker Samuel Eto'o and would have made him the highest-paid player in England. He's now on his way to Inter Milan.

Liverpool's Jermaine Pennant left for Spain's Real Zaragoza. Valencia's star striker David Villa simply said no when the English came calling, as did Bayern Munich midfielder Franck Ribéry, Valencia defender Raúl Albiol (who later said yes to Real Madrid), Inter Milan right back Maicon, and the Juventus midfielder Felipe Melo. The only high-profile player to sign with the Premier League this summer has been the defender Thomas Vermaelen, who went to Arsenal.

Why have players been rejecting hefty fees to play in the world's most celebrated soccer league? It's all Gordon Brown's fault. In April, the British government passed a measure that increases Britain's top tax rate from 40 percent to 50 percent. The enormous hike applies not just to wealthy soccer stars (the average base salary for a Premier League player is £1.1 million a year) but to anyone making over £150,000.

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When the tax increase first passed Arsenal striker Andrei Arshavin demanded that the team renegotiate his contract, calling the hike an "unpleasant surprise." Ronaldo's agent noted that it would mean an extra £670,000 a year in taxes for the star (who was then still with Manchester United). Arsène Wenger, the manager of Arsenal, matter-of-factly explained that the higher taxes would decimate British professional soccer. "[W]ith the new taxation system, with the collapse of sterling, the domination of the Premier League on that front will go," Wenger told the *Times* of London. "That is for sure."

The move is part of Brown's effort to soak the rich in order to make up for revenues lost in the recession. Three-hundred thousand Britons will be affected by the increase, which is expected to raise an extra £2.1 billion. Which hardly seems worth the bother, because Brown's plan also involves borrowing some £600 billion over the next five years and bringing Britain's public debt to 79 percent of GDP by 2013.

The result is that Britain's tax rate is now the highest in the professional soccer world. In Italy, players pay 43 percent on income. In Germany, 45 percent. In France, 40 percent. In Russia, only 13 percent. But the real winner is Spain.

Spain's top tax rate is 43 percent. In 2005, however, Spain amended the law to include a provision for high-earning "foreign executives," which would require them to pay only 24 percent. And not only did they create a massive loophole, they backdated it to 2003, which was, coincidentally, the year David Beckham left Manchester United to join Real Madrid. Beckham became the first man in Spain to acquire "foreign executive" status; the tax break came to be known as "the Beckham Law." And it has become an almost insurmountable advantage for Spanish soccer teams. Deloitte Sports Business Group estimates that between the falling pound, the higher British tax rate, and the Spanish tax break, U.K. clubs would have to pay 70 percent more in order to match a player's take-home pay in Spain.

Predictably, no one is happy with the situation. British papers are full of stories lamenting the demise of the Premier League. Also predictably, Britons seem more outraged by Spain's lower tax rate than by the increase in their own.

Hurrah for low Spanish tax rates: a happy 'executive' at work

NEWSCOM

The leftists in Spain are also unhappy. After Real Madrid acquired Ronaldo (and agreed to pay him £10.4 million a year), Spanish prime minister José Luis Zapatero called the salary "excessive" and his Socialist party introduced a proposal in parliament to repeal the Beckham Law. (A few days later the Socialists dropped the proposal as a reprisal against a coalition of parties even further to *their* left.)

And the purveyors of goo-goo pan-Europeanism have been affronted, too. Michel Platini, president of the Union of European Football Associations, claimed that there was something "abnormal" about the influx of talent to the Spanish league. "These transfers are a serious challenge to the idea of fair play and the concept of financial balance in our competitions," Platini told reporters. "UEFA is working hard with clubs to set up a new set of rules as soon as is possible to clean up the system." He called reforming "the system" UEFA's "top priority."

It seems unlikely that UEFA will have enough authority to regulate the tax policies of semi-sovereign states. Who *could* hash out such existential questions about fairness, soccer, and the nature of taxation? Well, that sounds like the European Union's entire job description.

It wouldn't be the first time the EU has meddled with sports. In 1995 Jean-Marc Bosman, an undistinguished player in the Jupiler League in Belgium, went to the European Court of Justice asking them to void his contract so as to allow him to sign with a French team. At the time, Bosman's case seemed hopeless—allowing him out of his contract would have up-ended the entire legal and economic underpinnings of European soccer. It was the equivalent of moving from baseball's old contract system to the current free-agent regime. But the court ruled in Bosman's favor and the face of soccer was changed.

Perhaps the EU will intercede again on behalf of the Premier League. Fairness—or rather, European-ness—practically demands it. ♦

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The Misuse of Remorse

When is a crime paid for?

BY CHRISTOPHER CALDWELL

Since late 2007, when Michael Vick, the former star quarterback of the Atlanta Falcons, was incarcerated for running a dog-fighting club out of his Smithfield, Virginia, home, a lot of things have broken his way. Vick, now 29, was able to spend the last two months of his sentence under house arrest. Former Indianapolis Colts coach Tony Dungy, a patient and generous man, has agreed to help mentor him. NFL commissioner Roger Goodell has okayed a conditional return to playing pro football no later than the third weekend in October.

No less significant, the entire game of professional football has been revolutionized in Vick's absence to become more friendly to Michael Vick. He is a good passer, but he is the greatest running quarterback ever. And last year, in the third week of the season, the previously lackluster Miami Dolphins unveiled a new "wildcat" formation in a game in which they did not just beat but demolished the New England Patriots, 38-13, handing the Pats their first loss since 2006. (Other teams had been experimenting with it.) The wildcat allows the quarterback to play a variety of roles. He can carry the ball on set running plays (not just scrambles and quarterback draws). He can catch short passes. By the end of the season a lot of teams were using the wildcat. And as Greg Cote, an excellent writer for the *Miami Herald*, wrote this week: "The wildcat and Vick's skill set are the greatest combination since peanut butter and jelly."

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The odd thing is that, by the middle of this week, no team had shown the slightest interest in signing Vick. The Dolphins actually ruled it out. So did the Washington Redskins, the Cincinnati Bengals, and the Detroit Lions, the worst team in NFL history. Only the Baltimore Ravens admitted considering it. Why is this?

One can point to the heinousness of Vick's crime. Not only is dog-fighting hard on dogs, Vick was found to have participated in killing some of the wounded ones. Between his arrest and his sentencing two years ago, People for the Ethical Treatment of Animals demonstrated outside the Falcons' training camp and outside the NFL offices in New York. This is a practical problem for whichever team signs Vick. But it should not be a moral problem. Treating animals well is important. Treating one's fellow humans well is more important. Athletes who have killed a person or beaten girlfriends and strangers have been welcomed back to their leagues.

Why should we care about remorse? We don't need Michael Vick to love dogs. We just need him not to repeat his crime.

No one who knows Vick well considers him a monster. He has a lot of the marks of a genuinely decent person. There was an interesting profile of him in *Sports Illustrated* a couple of years ago that sought to explain how he got into so much trouble. Former U.N. ambassador Andrew Young, a pillar of black Atlanta society, who had met Vick during his stint with the Falcons, pointed to some danger signs. One was that Vick hadn't changed his group of friends. He had remained in touch with poor and unsophisticated friends and family members from Newport News, Virginia, where everyone knew him as "Ookie." Young described him as "young and country." Others mentioned "ghetto loyalty" and saw Vick as being, like a lot of black athletes, "held captive by a code that requires them to help neighborhood friends." This is the theme of all profiles of Michael Vick.

Needless to say, there is a good side to that. Vick is loyal. He put old friends in charge of managing his endorsement contracts. He did a lot of good for the Boys & Girls Club of Greater Hampton Roads and for many other organizations that help poor kids. One night, at the height of his travails in the summer of 2007, a local community center sponsored a "community hug" for Vick. The director of the center described the evening to *USA Today*. Local youths had told him that "if PETA showed up in this neighborhood, they'd better bring Saint Peter with them."

Ingrid Newkirk of PETA told the *New York Times* last week: "We continue to ask Mr. Goodell to put him through psychological counseling and testing to see if he can be remorseful." It was Vick's lack of "remorse" that led the judge in his case to slap him with a longer sentence than his fellow defendants. But one cannot measure remorse. (One can measure servility, which is perhaps what those who call for remorse are generally seeking to procure.) And why should we care about remorse? We don't need Vick to love dogs. We just need him not to repeat his crime.

One of the great things about incarceration is that it relieves us of the need to look into our fellow citizens' hearts. "He's done the time," said Terrell Owens of the Buffalo Bills. He is right. We need to revive the idea of "paying one's debt to society." Otherwise we blacklist people forever, which is to say, we establish "debts to society" incapable of being paid back. ♦

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Against National Standards

Let the states decide what to teach—they'll do less harm. BY LIAM JULIAN

America's system of K-12 educational standards is confused and bothersome. Standards differ from state to state, and while some are quite good, many are dreadful, beset by sundry problems including mammoth omissions and factual errors.

What's more, states have an incentive to make their standards—and the tests that ascertain whether children have met them—easy, the better to allow large majorities of their students to do well. So it is that fully 88 percent of Georgia's eighth graders scored proficient in 2007 on the state's own reading exam, while just 26 percent hit the proficient mark on a national reading assessment the same year.

The often-suggested and seemingly sensible remedy—now embraced by the Obama administration—is national standards. Said Secretary of Education Arne Duncan in February, "If we accomplish one thing in the coming years it should be to eliminate the extreme variation in standards across America." Yet before such homogenization gets too far advanced, it is advisable to recall the recent history of national education standards and in particular the problems that ultimately sank an earlier draft.

The idea of national standards emerged in 1989, when President George H.W. Bush and the nation's governors convened for an "education summit" in Charlottesville, Virginia. The meeting endorsed six goals, one of which was that by 2000, "American students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography."

But Bush and the governors eschewed the onerous task of defining what "competency" meant and exactly what "challenging subject matter" should be mastered. The president also avoided legislating national standards, thinking, as did many, that this would give the federal government inappropriate and potentially unconstitutional power over local education.

> The man who directed the commission that composed the Goals 2000 history standards later said he hoped to 'let the kids out of the prison of facts, the prison of dates and names and places.' It is galling to think that what almost became the nation's history standards was guided by such foolishness.

Bill Clinton showed less compunction. He picked up where his predecessor left off, and Goals 2000, his expanded version of Bush's agenda, became law in 1994. The bill was nothing if not ambitious, intoning at the start of its 100-plus pages, "By the year 2000 . . . the high school graduation rate will increase to at least 90 percent, . . . every adult American will be literate, . . . every school in America will ensure that all students learn to use their minds well," and on and on.

Prominent in this grab bag of hopes and dreams was a plan for national standards to be designed by government-funded experts and overseen by a new federal agency. States that voluntarily reorganized their curricula to adhere to the standards could receive federal grants. The structure started to crumble in 1994, however, when Lynne Cheney—who as chairman of the National Endowment for the Humanities had approved the grant for Goals 2000 history standards—perused the final 271-page history standards and was apoplectic at what she read. She took to the opinion page of the *Wall Street Journal* to denounce a document "in which the foundings of the Sierra Club and the National Organization for Women are considered noteworthy events, but the first gathering of the U.S. Congress is not."

Goals 2000 bogged down in the controversy, further debilitated by its own complexity, including legislative add-ons that had nothing to do with education—Section 1018 of the bill called for classroom distribution of condoms; Section 309 concerned health care and social services—and by proposed national English standards that were written, according to the *New York Times*, "in a tongue barely recognizable as English."

Ancient history. But the problem that doomed national standards in the mid-1990s still exists: Who determines what is included in the standards and what is left out?

Secretary Duncan has lately lauded the work of the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO), which are at work jointly creating voluntary national standards in math and English (with the cooperation so far of 47 states). Furthermore, Duncan announced in June that his department will spend up to $350 million (part of the $5 billion it received in stimulus funds) to help states create tests to accompany the NGA-CCSSO standards. "This is the beginning of a new day for education in our country," he said.

Or maybe not. Spats over the

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authorship of the NGA-CCSSO standards started almost immediately. Henry S. Kepner Jr., the president of the National Council of Teachers of Mathematics, which produced its own national math standards in 1989, said in June that the NGA-CCSSO draft "should be based on work that has already been done"—in other words, on the work of his organization. (It was later announced that Kepner would be part of the NGA-CCSSO math-standards "feedback group.")

Kent Williamson, executive director of the 50,000-member National Council of Teachers of English, complained of the new national standards, "We have something positive to contribute, and we haven't been consulted so far." Maybe that's because the National Council of Teachers of English created the murky and largely unintelligible standards that the *Times* and others panned in 1996. But no matter. That group and innumerable of its acronymic peers remain certain that they each have "something positive to contribute" to the formation of national standards, and none will be denied the opportunity.

Unmentioned by those finagling to insert themselves into the standards-creation process are their underlying agendas—pedagogical, ideological, or other. Gary Nash, the man who directed the commission that composed the Goals 2000 history standards, for example—standards condemned 99-1 by the Senate—later said he hoped to "let the kids out of the prison of facts, the prison of dates and names and places." His agenda did not reflect a national consensus about history education. It is galling to think that what almost became the nation's history standards was guided by such foolishness.

When early drafts of the new NGA-CCSSO standards were leaked in late July, disagreement over their contents began straight away. E.D. Hirsch Jr., who started the Core Knowledge Foundation, wrote that the English section was "very similar to the dysfunctional state standards already in place," while the director of the International Reading Association said, about the very same section, that it "appeared headed in the right direction." The leaked drafts are far from complete. As the standards are filled out in response to feedback groups and other self-interested parties, the arguments will surely grow fiercer.

America's current system of state-based educational standards isn't great—far from it. But the very factors that contribute to the shoddiness of so many state standards are compounded at the national level, where every interest group from the textbook manufacturers to the national teachers' unions to the Springfield Elementary School Herodotus Society will want to have its say.

More important, several states have actually managed to craft admirable standards, among them California, Indiana, and Massachusetts; and several others are revising standards that badly need it. Will these states be compelled to jettison the results of their fine work and remake their curricula and assessments to jibe with "voluntary" national standards? A wiser course would be to publicize and praise states with top-notch standards and rigorous tests, while also publicizing and impugning those states content to slouch along with subpar standards and assessments.

What matters most here is the quality of the product, and the possibility of developing excellent standards shouldn't be sacrificed for the sake of middling countrywide uniformity. Better to push forward the process—sluggish though it is—of improving state-based standards than to preempt these local efforts with "voluntary" national standards concocted by interest groups and the educational establishment. Perhaps those drafting the NGA-CCSSO standards will avoid the many brambles that crowd their path. History suggests that stumbles lie ahead. ♦

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Insurance Against Terrorism

An alternative to unlimited liability for taxpayers.

BY ELI LEHRER

After hijackers destroyed the World Trade Center on 9/11, taxpayers ended up spending a lot of money to aid the injured, rebuild public infrastructure, improve security, and help the jobless. But the private firms with property and workers in lower Manhattan fell back on their private insurers. And the companies paid out: Over $35 billion flowed from their capital reserves to people harmed in the attack. No insurers went under as a result of 9/11 and all but a handful of claims were paid within a few months. In short, it was a shining hour for the insurance industry.

But if another major terrorist attack takes place, the industry won't have as much need to step up to the plate. Instead, the government will take charge. Under an obscure but potentially budget-busting program—terrorism risk insurance—the federal government has assumed nearly unlimited liability for major terrorism losses. The program, called TRIA, can claim broad support but has deep flaws and imposes billions in liabilities on taxpayers. The program, though never intended to be permanent, will be entrenched before long. Still, it's not too late to restore an affordable, private system of insurance.

Under the current program, once industry-wide private commercial and workers compensation insurance claims from a terrorist attack exceed $27.5 billion, TRIA kicks in and covers the remaining expenses up to $100 billion. (Congress would almost certainly lift the $100 billion cap if claims exceeded that amount.) In theory, the money to pay claims would come from a tax (up to 3 percent) on just about every eligible insurance policy in the country. If this tax proved insufficient, Congress would have to use other revenues.

Although TRIA was created in 2002 as a post-9/11 stopgap, insurance companies have shown almost no interest in replacing it. Often fractious industry groups representing brokers, insurers, reinsurers, and commercial insurance consumers have lined up in support of the program. And, when the Government Accountability Office studied terrorism insurance earlier this year, it found that the chances of a private terrorism insurance market developing were very slight. TRIA is currently authorized through 2014.

And that's a problem because the federal government—already stretched with bailouts and "stimulus" spending—has no business running a hugely expensive insurance program. Its record isn't encouraging. The other major federal effort at disaster insurance, the National Flood Insurance program, owes the Treasury about $19 billion, has no way to pay it back, and has actually increased the nation's susceptibility to flood by effectively subsidizing building in flood-prone areas. States like Florida that attempt to run property insurance programs have done even worse.

But that doesn't mean that doing away with federal terrorism insurance will be easy. The insurance industry has a good reason to support it. The current system for writing insurance really can't deal with terrorism adequately.

Explaining why this is so requires some background on how insurers manage risk. To write a policy, an insurer will build a group of similar risks—a pool—unlikely to experience losses at exactly the same time. An insurance company might calculate that the chances of a $100,000 house burning down during a given year were 1 in 100. It could then write policies for 100 homes in different neighborhoods worth $100,000 each and charge a yearly premium of $1,200 for each policy. Of the $1,200 collected, $1,000 would cover expected claims and the extra $200 would cover the expenses of writing the policy, provide for the purchase of reinsurance (insurance for insurance companies), build reserves, provide return on capital for company owners, and offer a margin of safety for the insurers' own uncertainty about its "1 in 100 chance" calculation.

But the actuaries who do these calculations can't make decent guesses about the likelihood of terrorist attacks. The past two decades have seen only three significant terrorist attacks on American soil. For every obvious target (like the World Trade Center), terrorists have picked a less-obvious one (such as Oklahoma City's Murrah federal building). The best information about terrorist risks, furthermore, remains a closely guarded secret within the intelligence and law enforcement communities. Before 9/11, large commercial insurers and reinsurers generally provided terrorism coverage nonetheless.

It's easy to see why they stopped. Based on existing data on the number of modern attacks on office buildings and the number of office buildings in the United States, actuaries forced to make the calculation might guess that the average yearly chance of a terrorist attack on a $25 million office tower located in a mid-sized city, is one in a million. This would indicate an "actuarial" yearly

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premium in the neighborhood of $25 for $25 million of coverage. But no insurance company with competent management would ever risk $25 million in capital for a premium of $25 or even $2,500. Even if an insurer decided to sell terrorism insurance at a price like that, state insurance regulators would likely block the sale as too risky to the company's other business. Insurance priced high enough to satisfy regulators and insurance company managers, on the other hand, probably wouldn't find any buyers.

Clive Tobin, the CEO of the Bermuda/London reinsurer Torus and a longtime reinsurance executive has floated another plan in comments at trade conferences: true reciprocity. Under a "true reciprocal" system, 25 firms that each own a $25 million office building would each take responsibility for paying $1 million if terrorists destroyed any group member's building. The firms would pay no yearly premiums in return for the coverage (they might pay administration fees and exchange $1 payments to make the contracts between themselves legal) and would not be regulated as insurers. Instead, they would simply pledge their full faith and credit to pay the claim if another group member experienced an attack. "What you are really looking for is an agreement," says Tobin, "to avoid an insured having to tell their board that their location has just been destroyed and they have no insurance."

The idea, as Tobin conceives it, could have some other wrinkles. For example, a company that owns a building in Manhattan might take on $50 million of risk for a Minneapolis-based company in return for the Minneapolis company taking on $10 million in Manhattan risk. Some sort of formal exchange, very likely, would have to exist to match participants' risks.

However it works out in practice, the idea has enormous potential benefits. Neither insurers nor insurance purchasers would have to divert any capital to buy expensive insurance policies against the unlikely possibility of terrorist attack but, simply by expanding the size of the groups they joined, could reduce their liabilities. Taxpayers would owe nothing. (Tobin suggests a secondary backstop that would have the government provide partial coverage against a specific company's default on its reciprocal obligations.)

And the idea isn't new. In fact, many existing mutual insurance companies like Ohio's Westfield Group and San Antonio-based USAA started writing farm and automobile insurance exactly this way and sometimes retain a few legal structures of reciprocity. The idea faded from practice as an insurance company that charges premiums in advance has a much easier time making payments on claims and can generate more profits by investing premium dollars between claims. If it doesn't suit most types of modern insurance, however, such a structure seems almost ideal for an entity providing sizeable commercial enterprises with coverage against rare terrorist attacks.

Under a 'true reciprocal' system, 25 firms that each own a $25 million office building would each take responsibility for paying $1 million if terrorists destroyed any group member's building. The firms would pay no yearly premiums in return for the coverage (they might pay administration fees and exchange $1 payments to make the contracts between themselves legal) and would not be regulated as insurers. Instead, they would simply pledge their full faith and credit to pay the claim if another group member experienced an attack.

Current law, however, makes it almost impossible to set up such a structure. "The major [problem] for me is how to make sure this process can be executed in an appropriate legal and regulatory framework, but keep this at a light touch," Tobin told me. Since each state regulates insurance individually, at least some would likely demand that every party participating in a reciprocal system submit to regulation as an insurance company. And noninsurance firms would never agree to that.

Risk retention groups, a class of lightly regulated federally authorized insurance companies that focus on malpractice coverage and backing for consumer product repair insurance, have something in common with Tobin's idea but do typically charge annual premiums and face all sorts of restrictions likely inappropriate to Tobin's idea. Just as important, the apparently permanent existence of TRIA and the lack of a real potential for profit in its absence makes it unattractive for anybody (even Tobin's own company) to spend lots of resources pushing an alternative.

Making an alternative to TRIA work will probably require special legislation in Congress. Given the uncertainties, furthermore, it would be unwise to repeal TRIA before reciprocal terrorism insurance arrangements get off the ground. Piloting the idea alongside TRIA, particularly by starting in areas unlikely to experience terrorist attack, could provide an important proof of concept.

The idea needs further refinement. But it's well worth considering. Replacing TRIA with a private system won't be easy. But leaving TRIA in place sticks the American taxpayer with nearly limitless liability for the coverage of private property. If the government would only facilitate its emergence, however, it seems that a private solution could be found to pay the bills for terrorist attacks. ♦

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Weighing America and Finding It Wanting

David Kessler's anti-obesity crusade

By Andrew Ferguson

David A. Kessler is a man of science—former dean of the medical school at Yale and a physician himself—but he is also a man of pudge, so not long ago he decided to combine the two interests in an experiment.

"I walked into a bakery," he writes in his new book, *The End of Overeating*, "and asked for two semi-sweet chocolate-chip cookies." He took them home and looked upon them. And Kessler saw that they were good. Better than good.

"They were thick and gooey—chunks of chocolate filled the craters of the cookies and rose into peaks."

He placed them on his work table, an arm's length away. "I was fixated on those cookies," he writes. Without noticing, he inched his right hand closer to the cookies, just within reach of the overbrimming craters, the peaks rising chocolaty to the sky.

He went upstairs. "But even from that safe distance, I could not fully shake the image of the cookies." Yet he didn't eat them! He left the house, "and I felt triumphant." Then he went to a coffee shop and ordered "an orange-chocolate cookie and ate it at once." There his experiment ended.

As rigorous scientific research goes, this isn't Louis Pasteur. Kessler the author moves on, and the reader can't be quite sure what the experiment was meant to illustrate. Even if you concede that Americans are fat—and you'll get no argument from me—and that this widespread (heh) and chronic obesity qualifies as an "epidemic," it's not clear what David Kessler's individual powerlessness before a cookie has to do with anything beyond David Kessler. But that, it turns out, is just the point. Kessler has said in interviews that his weight yo-yos between 160 and 230 pounds. Now he is intent on making his difficulties our own, so that the means of overcoming them will apply not only to himself but to the rest of us too. For in addition to being a man of science and a man of calories, Kessler is also a man of government, an activist and believer in public policy's limitless capacity to improve mankind.

Though his most prominent public role was in the 1990s, as director of the Food and Drug Administration under George H.W. Bush and Bill Clinton, he is a figure more suited to the present moment. The tobacco bill that President Obama signed in June, to cite one example, is mostly a collection of measures that Kessler tried but failed to enact during his years at the FDA. The legislation doubles—triples! quadruples!—the agency's regulatory power, greatly restricting the range of permissible activity for tobacco companies and their sales outlets, and making life even more difficult than it already is for smokers who want to smoke.

Congress and the administration are entertaining ways to make us healthier: rewards and punishments sprinkled all along the path that food travels from farm to feedbag.

The tobacco bill was vintage Kessler not only in its programs but in its premise: that dark forces of commerce are getting rich off a citizenry powerless to resist their sophisticated manipulations. The same view shapes most of the current administration's efforts to reform the everyday behavior of Americans along cleaner, more healthful, and more rational lines. Because we drive too many miles in the wrong kind of cars, use the wrong kinds of light bulbs and tools, mismanage our finances, garden with the wrong fertilizer, eat too much of the wrong foods, and so on and so on—all with far-reaching consequences that we refuse to calculate—Congress and federal agencies are taking greater interest than ever before in the habits of their fellow citizens.

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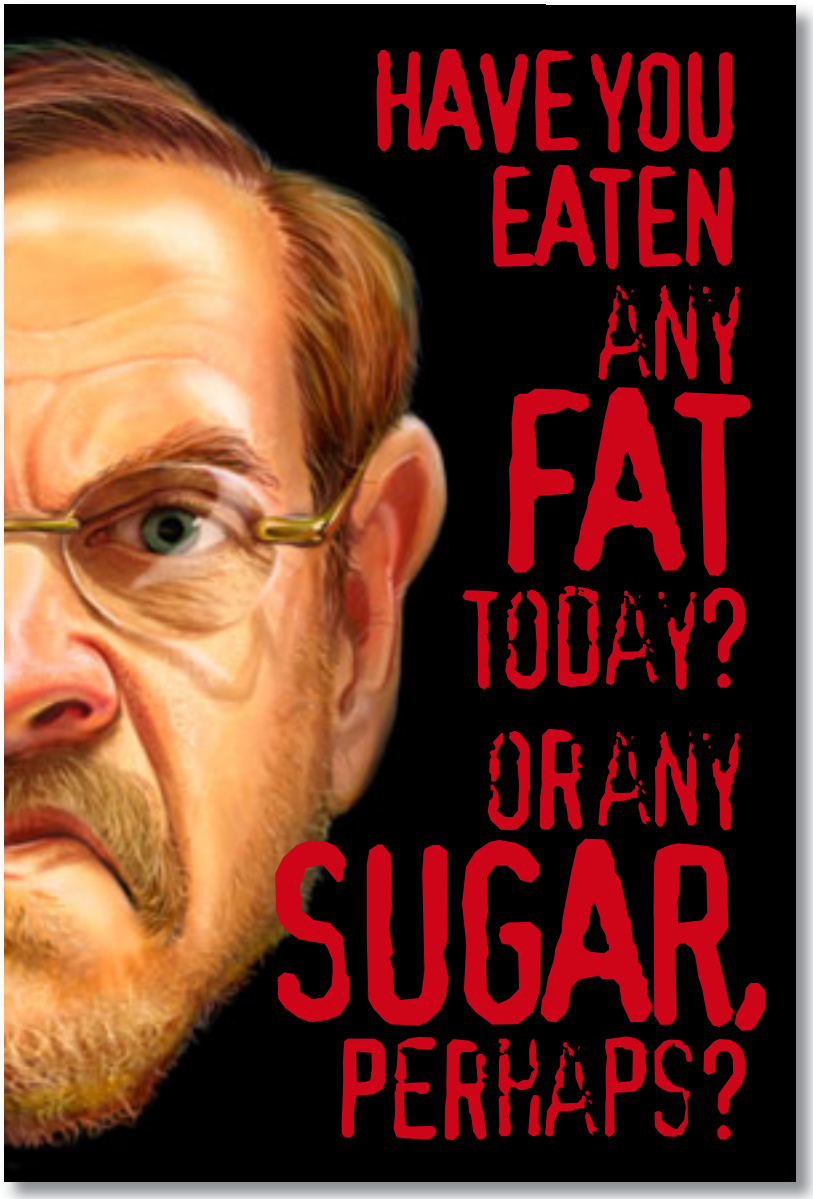
Kessler's present preoccupation, the evils of food, is nicely timed. At last count his book had spent three months on the *New York Times* bestseller list. During the last week of July he was the subject of two special reports on ABC, one on *Good Morning America* ("Food Addiction Confessions") and another on *Nightline* ("Hooked on Food"). And the Centers for Disease Control held its first national conference on obesity, cutely titled "Weight of the Nation," to address the subject from a perspective identical to Kessler's. His thesis is that sugar, salt, and fat—the lures with which the food industry entices Americans into obesity—are the new tobacco, ripe for the same regulatory regime that has bankrupted companies, upended livelihoods, and put the centuries-old custom of smoking on a fast track to ultimate extinction. In this view, the food industry, health care reform, and American eating habits are all tangled together, creating another opportunity to make us live more sensibly. One leftwing blogger for the *Washington Post* outlined the reasoning:

> Health reform is in the works. And the administration is desperately looking for ways to cut costs without denying care. One way to do that is to make people healthier so they need less care. And one way to do *that* is to avert the obesity epidemic.

The *Post*'s blogger probably doesn't know the meaning of "avert," for it is now common wisdom that the epidemic is already upon us. Under cover of health care reform, Congress and the administration are entertaining several ways to "make people healthier," as the blogger put it, by changing what we're fed: higher subsidies for the production of foods regulators approve of, higher taxes on foods we should dislike, rewards and punishments sprinkled all along the path that food travels from farm to feedbag. One of the more modest proposals is the Menu Education and Labeling Act. MEAL would require restaurants to trash their old menus and print new ones that will announce, in big block letters, the level of trans fats, saturated fats, carbohydrates, sodium, and calories found in every dish they offer. MEAL echoes the exhaustive labeling that Kessler, as FDA chairman, helped mandate for packaged food in 1995. Those earlier labels increased costs to food producers by billions of dollars and have proved an unambiguous flop; consumers stubbornly continue to eat whatever they want and ignore the gruesome details about what they're eating. In the logic of regulators, however, the failure of one regulation can always be overcome with an additional regulation. And for a government guy, regulatory activity is its own reward.



GARY LOCKE

This is where Kessler's new book will prove particularly useful, for both regulators and their adversaries, as either guidebook or sounding alarm. *The End of Overeating* offers a case study in progressive paternalism. He's giving us an inside look at the thinking that leads a person in power to scan his citizens and reconceive their private failings, individual preferences, or personal indulgences as pressing

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matters of state, and thus fit for government correction.

When it comes to the question of what to do about all these fat people waddling around, Kessler believes he's the bearer of big news. "No one has recognized what's really happening," he writes. "Let me try to explain." At bottom is this insight, which he says is supported by the very latest scientific data: "Weight gain is primarily due to overeating. … Eat more, gain more weight." The idea that fat people get fat because they eat too much may not strike you as earth-shattering, but that just means you haven't been following the back-and-forth palaver about American obesity. For nearly a generation the popular notion has been advanced that obesity is something that happens *to* people; more often than not fat people are fat through no fault of their own. In a massive effort at blame-shifting, network medical correspondents, morning show hosts, and newspaper health columnists advanced theories designed to put the primary responsibility for obesity everywhere but on the person who gets fat. Obesity is a heritable trait, went one popular theory; it's genetically determined, so thank mom and dad. Or it's a consequence of overconsumption of specialized "fat grams," the inevitable result of a predisposition to seek out the wrong kind of calories. Or it's a question of a faulty metabolic system that layers globs of fat along beltlines and bottoms instead of shedding them in the normal manner.

All wrong, according to Kessler, speaking here as the man of science. No such theories are supported by the most recent research. In their absence, the more commonplace notion of personal responsibility might enter in: People are fat because of what they do themselves, not because of what is done to them, and therefore the consequences of what they do are best borne by them alone—are best thought of, that is, as nobody's business but theirs.

But Kessler the man of government recognizes that the old idea of personal responsibility undercuts the case for governmental regulation, which at least in theory is designed to prevent harm being done to one party by another. So Kessler the man of science enlists Kessler the man of pudge to testify to the helplessness a fat person feels. The blame can still be shifted. All those fat Americans may not be victims of screwy metabolisms or genetics, Kessler says, but we can still think of them as helpless victims. And where there's a victim, a victimizer must be found.

The primary victimizer is, of course, the American food industry. Kessler believes that the products it offers its customers are irresistible. This is a common view and getting commoner. As our Baby Boomers age, the famous ardor they once felt for sexual intercourse has been transferred to food, which at their time of life is more easily attainable and requires less fuss. Kessler's tortured encounters with one foodstuff after another are described in a prose that is nearly Jackie Collins-like in its sensual intensity. Embarrassed readers may wonder whether they shouldn't just leave the room. Here is the author at a Panera Bread outlet, encountering a shapely little thing called a "cinnamon crunch bagel."

> The topping gave the bagel a crunchy sweetness, which contrasts nicely with the soft interior. The aroma of cinnamon was pleasant and persistent, and the vanilla chips offered appealing bursts of flavor. As I chewed, the bagel was quickly transformed into a moist wad in my mouth, with the crunch becoming finer as it dissolved. It was easy to chew and to swallow and its sweetness lingered yet didn't overwhelm the other flavors. Well lubricated by its fat content and mixed with my saliva, the wad of bagel melted perfectly in my mouth.

Hungry yet? "Panera," he concludes, "had figured out how to put the fat, sugar, and other flavor enhancements together to provide exactly the sensory experience I wanted."

You'd think he'd be grateful. Instead he's offended. Never before in history, he says, has food been this tasty, this available, this … seductive. Worst of all, that flavor, that texture—they're premeditated. Citing advertising and personal testimony, much of it anonymous, Kessler goes to great lengths to prove what nobody could have doubted: The food industry tries very hard to make products that customers will like. This is the way market transactions are supposed to work, but Kessler believes that when food is at issue, the process is sinister and manipulative—just as it is with SUVs, tobacco, and other products that progressives hope to regulate in making our lives better. "The food industry is the manipulator of the consumers' minds and desires," he says, and it's been so successful it's rendered its customers powerless to resist.

How could this be? Are we not men, human beings endowed with a will, free citizens of a self-governing country? Well, not exactly. At this point, in *The End of Overeating*, Kessler the man of science returns. For it is not only the food industry that is doing the victimizing. The dark forces of capital are in cahoots with the natural forces of evolution and biology to force the American population into obesity. Kessler has embraced the fashionable reductionism that most popular science writers succumb to these days. And no wonder. Reductionism is the metaphysics of our intellectuals. Somehow they

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have convinced themselves that the most accurate way of accounting for reality is to reduce everything that happens to its physical processes: Neurons dart, chemicals percolate, synapses bristle, and—presto—you've got the Sistine Chapel and the Bhagavad Gita, the Little Sisters of the Poor and the bombing of Hiroshima, Rosalyn Tureck playing the Goldberg Variations and an American consumer going limp watching an ad for a Triple Stack Baconator from Wendy's. Reductionism gives off an air of scientific rigor. With Kessler it makes his case for regulation appear more impressive and, what amounts to the same thing, more complicated than it really is.

Kessler is an old hand at this. As FDA director, in agitating publicly for regulation of tobacco, he never referred to a cigarette as a cigarette; it was instead a "nicotine delivery device." As a description, the phrase is so incomplete as to be essentially inaccurate. But it sounded clinical, and it shifted the subject to what Kessler wanted to talk about, away from the free choice of the smoker and onto the ostensibly sinister motives of the cigarette maker. And it worked. In *The End of Overeating* he does the same for food, especially if it's food that people enjoy. He describes each food item in terms of its components—sugar, salt, fat, or some combination of the three—as if this disaggregation were a more accurate rendering of the thing as a whole.

Gently but inevitably, Kessler compares the American eater to Pavlov's dog, salivating on cue. He fails to point out what, at this late date, may require pointing out: The difference between Pavlov's dog and a human being is that one of them is a dog.

Consider the humble cheeseburger. Use the word and all of us know what you mean. Kessler has a different idea. "In reality," he writes, "this dish is fat surrounded by layers of sugar on salt on sugar and salt." The "in reality" is sublime sleight of hand. Why is it more "real" to describe an object as a (selective) list of its components, rather than as the whole we're familiar with? Probably because the object we find appealing—the yummy cheeseburger—vanishes when it's reduced to a list of ingredients. And it helps if even the familiar ingredients are made to seem unfamiliar: fat (in place of meat), sugar (in place of bun), sugar and salt (in place of cheese). What's missing? Only everything we think of when we think of a cheeseburger.

The reductionism continues when we move beyond the cheeseburger to the poor, misguided, tubby American who wants to eat it. He may think he wants to eat it because he likes a cheeseburger. Kessler knows better. "In reality," the consumer is a network of biological cravings, chemical reactions, and conditioned responses—an organism pulled this way and that through the wiles of the industry. These too are described in great detail, with reference to an exhausting parade of laboratory experiments, most of them involving furry animals.

Rats, it turns out, like fat and sugar as much as we do. Scientists can condition them to crave some kinds of food over others, using cues like lights or noise—just as, Kessler says, the food industry has learned to use the texture of food, the sight of it and smell of it, to make our bodies release dopamine and generate activity in the frontal orbital cortex, which in turn sets off a craving that can only be satisfied by consuming its product. What's missing in this inexorable chain of cause and effect? Only everything we think of when we think of an individual person. Gently but unavoidably he compares the American eater to Pavlov's dog, secreting saliva at the ring of a bell or the flash of a garish menu at Chili's. He fails to point out what, at this late date, may require pointing out: The difference between Pavlov's dog and a human being is that one of them is a dog.

Reductionism is almost always unsatisfying, at least to certain kinds of people. It invariably leaves out half the story at least, and it usually leaves out the moral of the story—or gets the moral wrong. But reducing a man to his biology has great advantages, at least to certain other kinds of people. It perfects the blame-shifting by removing individual responsibility—the very possibility of self-control—from the equation. Instead, one set of forces (commerce) is exploiting another (biological urgings). It makes it easy to think of a man, when he is thought of at all, as a puppet on a wire, readily distracted from serving society's greater good by hucksters selling cigarettes, big cars, fluorescent light bulbs, cheeseburgers, cinnamon crunch bagels … the list is very long and getting longer. And if the poor creature, this formerly free citizen, is doomed to be manipulated, isn't it better for all of us if he's manipulated by the forces of light and not of darkness? ♦

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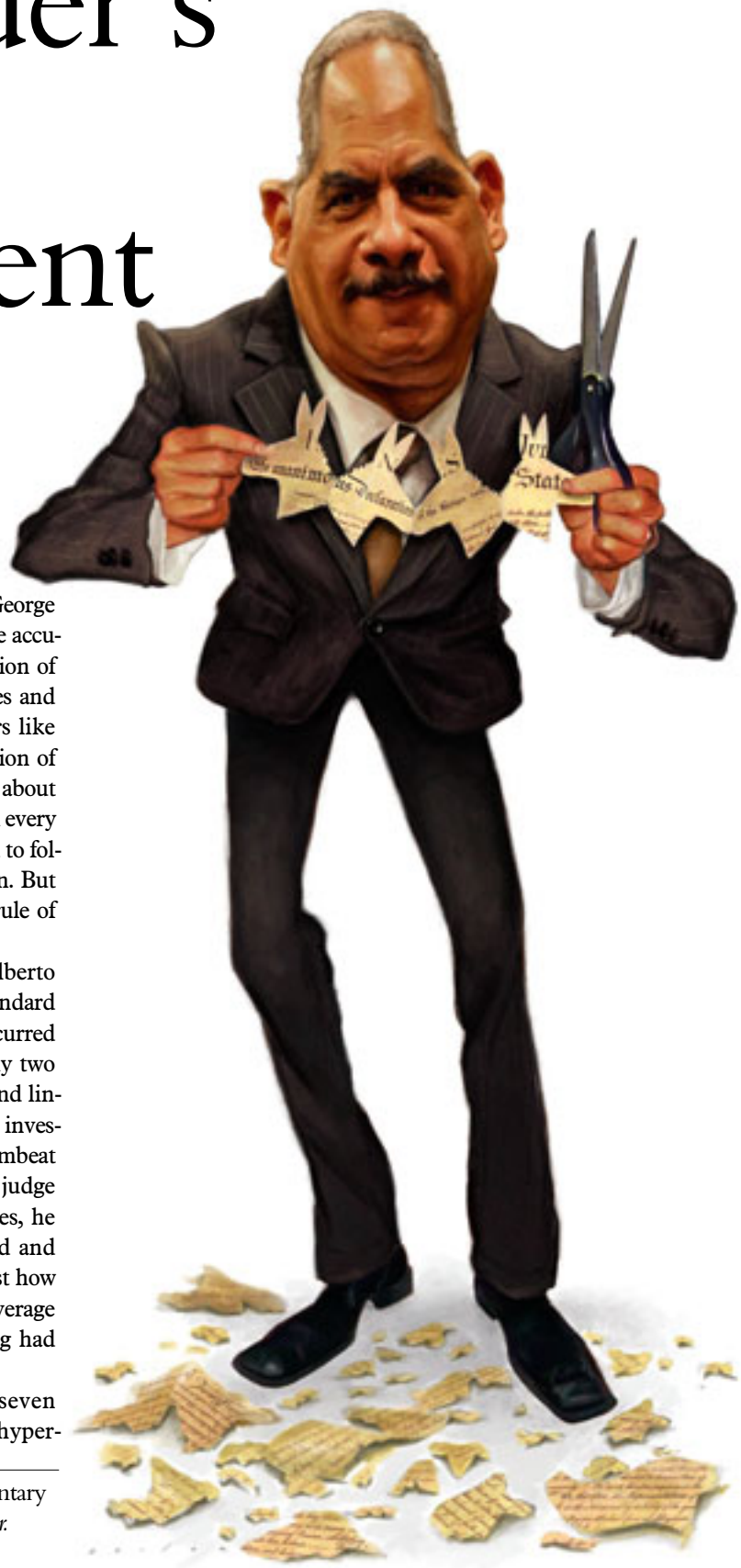
Eric Holder's Justice Department

It's all politics, all the time.

By Jennifer Rubin



In the litany of criticisms leveled at President George W. Bush none was repeated more often than the accusation that he had "politicized the administration of justice." In endless television show appearances and congressional hearings, Democratic lawmakers like Senator Chuck Schumer railed against the politicization of the Justice Department, lecturing all who would listen about how Justice "is different than any other department. In every other department, the chief cabinet officer is supposed to follow the president's orders, requests, without exception. But the Justice Department has a higher responsibility: rule of law and the Constitution."

Democrats loved to berate the often hapless Alberto Gonzales, who they claimed failed to uphold this standard as attorney general. Although the alleged offenses occurred primarily on the watch of Gonzales (who served only two and a half of Bush's eight years), the criticism stuck and lingered long after Gonzales departed. Inspector general investigations and oversight hearings maintained the drumbeat of accusations. And when the distinguished federal judge Michael Mukasey was nominated to replace Gonzales, he was peppered by Senators Joe Biden, Russ Feingold and Patrick Leahy, among others, with questions about just how badly the department had been "politicized." The average American couldn't help but conclude that something had gone terribly awry.

It is therefore surprising that in the first seven months of the Obama administration, a series of hyper-

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partisan decisions, questionable appointments, and the inexplicable dismissal of a high-profile voter intimidation case against the New Black Panther party have once again fanned suspicions that the Justice Department is a pawn in partisan political battles.

Both in Congress and among a number of current and former Justice Department employees is a growing concern that the Obama administration is politicizing the department in ways the Bush team never imagined. A former Justice employee cautions that every administration has the right and the obligation to set policy. "Elections have consequences," he affirms. But he thinks that the Obama administration has gone beyond policy reversals and is interfering with prosecutorial decisions, staffing the department with unqualified personnel, and invoking privilege to thwart proper congressional oversight and public scrutiny.

Sitting in his Capitol Hill office, Texas Republican Lamar Smith, the ranking member on the House Judiciary Committee, speaks in careful, clipped sentences, rephrasing at times to convey precisely what he means. His irritation is apparent. "The whole concern here is an administration that would not politicize the Department of Justice. That was a major campaign rallying cry," he says. "If it was isolated you'd think it was an exception to the rule. But where you see three or four examples then you really worry whether they themselves are verging on violating the law or the oath of office."

This is not what the Obama administration had promised. In his confirmation hearing Eric Holder declared,

> The attempts to politicize the department will not be tolerated should I become attorney general of the United States. It will be my intention to return [the civil rights] division and the Department of Justice as a whole to its great traditions and the great traditions that it had under Democratic and Republican attorneys general and presidents.

He further pronounced,

> I will work to restore the credibility of a department badly shaken by allegations of improper political interference. Law enforcement decisions and personnel actions must be untainted by partisanship. Under my stewardship, the Department of Justice will serve justice, not the fleeting interests of any political party.

While some conservatives doubted that the man who helped facilitate the Marc Rich pardon and overrode the recommendation of career attorneys to give Bill Clinton a favorable recommendation on the pardon of 16 Puerto Rican terrorists in 1999 could live up to those pretty sentiments, he was confirmed by a vote of 75-21 with the support of many Republican senators.

JASON SEILER

Holder soon cast aside his confirmation rhetoric in favor of partisan politics. The first battle occurred over the Office of Legal Counsel (OLC), the elite group within the Justice Department that wrestles with difficult constitutional analysis and acts as the constitutional arbitrator for the entire administration. During his confirmation hearing Holder specifically pledged,

> We don't change OLC opinions simply because a new administration takes over. The review that we would conduct would be a substantive one and reflect the best opinions of probably the best lawyers in the department as to where the law would be, what their opinions should be. It will not be a political process, it will be one based solely on our interpretation of the law.

Within weeks, however, Holder violated that pledge when the issue of voting rights for the District of Columbia emerged. It had been a longstanding position of OLC, dating back to the Kennedy administration, that federal voting rights for the District could not constitutionally be granted by statute. This position did not sit well with the new Obama administration, or with Holder personally. After all, Holder has been a prominent figure in D.C. politics and was introduced at his confirmation hearing by a longtime friend and ally Eleanor Holmes Norton, the District's nonvoting representative and a key proponent of D.C. voting rights.

Presented with OLC's settled position, Holder opted to shop around for another opinion. He went to the solicitor general, asking a lower threshold question, namely whether the solicitor general could "defend" the Obama administration if it signed a statute granting D.C. voting rights. Clint Bolick, a veteran of the Reagan Justice Department, observes, "I don't recall [another instance] when the Department of Justice went back to get a second answer, when you have a 'do over,' when the best lawyers come up with the 'wrong answer' from a policy perspective."

Another former Justice Department attorney finds the opinion shopping "extremely out of the ordinary." "[OLC] is the last word on constitutional issues," he explains. "Holder asked the wrong question to the wrong office and got an obvious, easy answer to satisfy his political agenda."

Lamar Smith describes as "worrisome" not only the initial decision but also Holder's subsequent behavior. The attorney general rejected requests from Republican members of Congress for the documents pertaining to the decision. When Holder objected to revealing the Department's internal deliberations, Smith modified his request to ask only for the final opinion, rather than the complete legal analysis. Again, Holder refused. Smith observes, "This is an administration perfectly willing to make public the interrogation techniques [used by the CIA to extract information from terrorists] but something like legal advice they might make available—we can't get these."

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Many current and former Justice Department employees are angry about the decision. One explained, "Holder in his own words called the OLC the *crème de la crème* of Justice. The longstanding opinion of both parties' administrations shouldn't be jettisoned to serve political ends." Another longtime Justice employee says that he "never heard of such a thing." He remarks, "That's why we have institutions—to contain the authority of any one individual."

But Holder's effort to run roughshod over OLC and rebuff of subsequent scrutiny was just the beginning of his efforts to conceal controversial decisionmaking.

To Representative Frank Wolf, a moderate Republican from Northern Virginia, the "most egregious" action by Holder and the Obama administration concerns the disposition of detainees at Guantánamo Bay and Justice's interference with the flow of information from the FBI. His annoyance obvious, Wolf explains that he sent multiple letters to Holder asking a list of questions concerning the potential release of detainees, and in particular about the Uighurs, who news reports suggested at one point were about to be released in Northern Virginia. He was rebuffed: "I'm the ranking member, and I can't get them to answer a question." Wolf says that the Justice Department even went so far as to forbid FBI briefings with his office unless a Justice Department representative was present, which he terms "outrageous." He received one briefing from the FBI, but "then the political guy came in and chilled the entire meeting."

The Obama administration is interfering with prosecutorial decisions, staffing Justice with unqualified personnel, and invoking privilege to thwart proper congressional oversight and public scrutiny.

Efforts by Representative Lamar Smith and Senator Jeff Sessions of Alabama to obtain information on the administration's Guantánamo plans, including a response to their query as to how the possible release of the Uighurs squared with federal law preventing entry into the United States by those who had received terror training, were similarly thwarted. Smith says that on the topic of detainees, "We haven't gotten a single response to a letter of inquiry."

But these instances are tame compared with the Justice Department's controversial and still unexplained decision to dismiss a default judgment obtained in a case of egregious voter intimidation. On Election Day 2008, members of the New Black Panther organization, dubbed by the Justice Department a "black-super-racist organization" were captured on videotape at a Philadelphia polling place. One wielded a nightstick. All wore the uniform and insignia of the organization. They made racial threats and hurled insults at voters. After the video made its way around the Internet, the voting rights section of the Justice Department's civil rights division investigated. Additional evidence showed that the New Black Panthers had in Internet postings called for "300 members to be deployed" at the polls on Election Day. Bartle Bull, a veteran activist and civil rights attorney, filed an affidavit in support of the Justice Department, terming it "the most blatant form of voter intimidation I have encountered in my life in political campaigns in many states, going back to the work I did in Mississippi in the 1960s."

A Justice Department complaint was filed on January 7, 2009, against the New Black Panthers national organization and the individuals present at the polls. Although the Justice lawyers urged the defendants (one of whom was a lawyer himself) to respond, they did not. The court then ordered the Justice lawyers to file a default judgment against the Panthers. Nevertheless, in an unprecedented move, the Justice Department in May dismissed the case against all defendants, save the single nightstick-wielding individual.

Multiple sources within and outside of the Justice Department confirm the curious sequence of events. In April, a preliminary filing of default was filed by Justice lawyers with the court clerk. No concern or objection was raised within Justice. This decision was approved by both the acting assistant attorney general for civil rights, Loretta King, and Steve Rosenbaum, previously acting deputy assistant attorney general for civil rights and recently returned to his post as section chief for housing.

Shortly thereafter, the career lawyers who actually filed the case and obtained the judgment were peppered with questions, according to sources with knowledge of the events. New legal theories were raised disputing how the non-baton-wielding defendants and the New Black Panther party itself could be charged. There wasn't enough evidence, it was suggested, or the case had to be dropped entirely because there was only conclusive evidence against the single baton-wielding defendant. The New Black Panthers had First Amendment rights the career attorneys were told. On it went, as each theory was researched and shot down by the beleaguered lawyers.

As the internal battle raged, the career lawyers presented ample facts and legal theories based on basic principles of liability and citations to other voting rights cases to substantiate the case. In late April, they were instructed by King to

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seek a delay of the default judgment for two weeks and to make no mention of the change in administrations in the filings seeking the delay. In mid-May, the appellate section weighed in recommending the case go forward. Case discussion, briefings, and mock arguments continued. All of this came to an end when King ordered the default judgment withdrawn on May 15. The decision mystified lawyers in the civil rights division as well as outside observers including the U.S. Commission on Civil Rights, which sent a letter of inquiry.

Following the default judgment and its coverage in the press, Lamar Smith and Frank Wolf sent rounds of letters demanding to know who made the decision and why. Justice spokesmen insisted in writing and in congressional briefings that "career lawyers" had made the call. But King holds a political position. Those with direct knowledge of the events and veterans of the department both doubt that a decision as controversial as this could ever be made without at least consulting King's boss, associate attorney general Thomas J. Perrelli, and likely then the deputy attorney general and the attorney general himself. And indeed this week the *Washington Times* reported that Perrelli had made the final call. Certainly once the decision was made, Holder and his political appointees soon became deeply immersed in the effort to respond to congressional leaders' attempts to ferret out the reason for the dismissal.

Samir Shabazz and Jerry Jackson of the New Black Panther party at a Philadelphia polling station on November 4, 2008.

The Justice Department initially claimed the "facts and law" did not support going forward in the case, although just weeks earlier a default filing had been supported. More letters followed from Smith and Wolf addressed to Holder and his underlings. In mid July, the Justice Department offered a series of thinly supported reasons for the dismissal. The case was dismissed because the Panthers' Internet posts about deploying at polls did not mention bringing weapons, Justice claimed. Yet voter intimidation laws require no such specificity or the use of weapons. Then Justice claimed the New Black Panther organization did not control the individual defendants. But again, the facts—specifically an interview where the New Black Panther chairman boasts of such control—suggest otherwise. Next Justice suggested there was no case because the Black Panthers disavowed the defendants' actions after the fact. Voluminous case law suggests that this defense is preposterous. The Justice Department, moreover, never explained why more discovery was not conducted in the case if the facts were in doubt, rather than an outright dismissal.

The Justice Department had invoked claims of "privilege" to resist providing further information to Wolf, although ample case law suggests that excuse cannot be deployed against members of Congress.

One cannot read through the correspondence without concluding that Holder's Justice Department is grasping at straws to defend a decision made for a purpose it wants to conceal. Positions never before used by the civil rights division have been tossed about, in contradiction of previous case law and department policy. While the Justice Department has cited the First Amendment rights of the Panthers, it had never before accepted such a defense in a case of voter intimidation. (Steve Rosenbaum himself once filed a voter intimidation claim against Jesse Helms and the North Carolina state Republican party for merely sending a postcard memo, normally quintessential protected political speech, which the department found misleading.) And while the Justice Department seems bent on coming up with excuses for the New Black Panther party, the department took an entirely different approach in Pima County, Arizona, where the presence of Minutemen legally carrying firearms on Election Day set off more than a half dozen visits by the Justice Department and multiple inquiries.

Observers remain baffled as to the reason for the dismissal. Some wonder if a Philadelphia politician weighed in. Others speculate that the Obama administration fears offending allies in the African-American community or simply recoiled against the notion that civil rights laws originally designed to prosecute white segregationists might be applied to a militant African-American organization.

But, as one former Justice official notes, although charges of "political meddling" were constantly raised in

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the Bush administration, "to date the inspector general has never found a single case dropped or instituted due to political interference. Already [during the Obama administration] we have a case—the New Black Panther case—in which *actual* politicization occurred."

Wolf becomes irate when discussing the New Black Panther case. Asked if he believes the Justice Department has been honest, he says tersely, "I don't." Although he was briefed by King and Rosenbaum (who had not worked on investigating or filing the case), they seemed unaware of some of the case's basic facts. They claimed that one defendant lived at the facility and therefore had a right to be at the polling place. Wolf pointed out the polling place was a retirement home and that the defendant lived blocks away. The Justice Department attorneys told Wolf they "didn't know anything about him living there." He says, "We can't get an answer. I have lost confidence in Eric Holder. I don't know if I believe them."

Smith and Wolf are pursuing multiple avenues to get to the bottom of the matter—requesting an inspector general investigation, seeking a hearing or a possible congressional resolution. The inspector general has referred the matter to Justice's Office of Professional Responsibility (OPR). House Judiciary chairman John Conyers is considering a hearing, but only on the general topic of voting rights (although Republicans on the committee would have the opportunity to raise the issue). Following release of the *Washington Times* story identifying the associate attorney general's involvement in the case, Smith issued a written statement blasting the Justice Department's lack of candor:

> It is clear that political appointees at the Justice Department allowed career employees to be pressured to drop a case against the President's political allies. That is politicizing justice and it undermines democracy. The Attorney General must come clean to Congress about the role his political appointees played in the dismissal and disciplinary action must be taken against anyone who applied political pressure to sway a law enforcement matter.

But it is not just such decisions at Justice that are raising eyebrows. The hiring and appointment decisions by the Obama administration have been equally surprising. There was no greater criticism of the Bush Justice Department than "cronyism" and politicization of hiring decisions. The firing of nine U.S. attorneys set off a firestorm that ultimately resulted in the resignation of Gonzales, who was himself regularly criticized as being insufficiently independent of President Bush.

As Clint Bolick explains, "The president is entitled to have whatever policy advisers he wants. But when you have someone whose job it is to enforce the law you must have someone who is not only qualified but someone determined to enforce the law." That standard seems not to be operative in the Holder Justice Department.

Take the case of Mary Smith, a Native-American Chicago lawyer and Obama supporter. She has been nominated as assistant attorney general in the tax division. While she did serve in the Clinton administration, she has no expertise in tax matters and has not spoken on the topic or taken professional education courses in tax law. She did, however, work on three successive Democratic campaigns (including Obama's). A former Justice Department official asks of Smith, "This was the best they could do?"

At her confirmation hearing, Senator Sessions voiced his grave displeasure. "Tax law is very specialized and it's certainly not an area where you learn on the job." He continued, "You should not put people in a job they're not prepared to handle." While the Senate Judiciary Committee voted to confirm her not a single Democrat spoke in her defense. Lamar Smith says, "It is obviously being done for political reasons. It is not supposed to be a reward for politics back home. It is a violation of trust and a disservice to the American people." One current Justice Department attorney remarks that placing a political supporter in charge of the tax division "sounds like Nixon."

Jennifer Daskal questions the guilt of Khalid Sheikh Mohammed. Her new job is on the Guantánamo task force on detainee policy.

Attention has also focused on Jennifer Daskal, a former Human Rights Watch lawyer with no prosecutorial background but rather a record of aggressive advocacy on behalf of Guantánamo detainees (e.g., questioning the guilt of Khalid Sheikh Mohammed, objecting to the incarceration of a 15-year-old who killed Marines). Her new job, remarkably enough, is on the Guantánamo task force that will make recommendations on detainee policy. She is now free to pursue her agenda from inside the Justice Department.

Dawn Johnsen's nomination to head OLC quickly became controversial given her record of rabid criticism of the Bush administration, her extreme views on national security and abortion (she once wrote that limits on abortion would be tantamount to "slavery" under the Thirteenth Amendment), and her insistence that the Justice Department should pursue novel legal theories based on "economic justice." Threatening a "make-over" of OLC, she appeared to be precisely the sort of extreme partisan whom Holder had suggested would be unwelcome in his department. Her

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nomination has now stalled, with a number of Democratic senators unwilling to support her nomination.

Then there is Les Jin, who was chief of staff to the controversial former chair of the U.S. Commission on Civil Rights, Mary Frances Berry, who engaged in such regular political stunts as attempting to prevent the seating of George W. Bush's lawful nominee to the commission. Jin is now in a senior counselor spot at Justice. Another opening has been staffed by Julie Fernandes, an attorney who, prior to joining the department, worked for a left-wing civil rights organization and routinely weighed in on pending cases. Mark Kappelhoff who was chief of the criminal section of the civil rights division at Justice (and who took the position, while serving in the criminal section, that a campaign mailer reminding voters they must be citizens to cast a ballot was illegal "voter intimidation") maxed out as an Obama donor and has been boosted to principal deputy attorney general for civil rights.

While the Bush administration was investigated for seeking out conservative lawyers and staff, the Obama administration has been given a pass for going to the other extreme and stocking Justice with ultra-left leaning partisans. Overt signs of political activity and support now are on full display throughout the department. While it was unheard of to display campaign literature or paraphernalia during the Bush years, in the Holder Justice Department "Yes we did!" signs are fully evident, as are copies of reverential Obama campaign posters.

There also remain the ongoing investigations of OLC attorneys in the Bush administration, concerning the advice they provided about the legality of interrogation techniques. Although Obama has urged the country "to look forward and not back," Holder is pressing full steam ahead with the investigation of John Yoo, Jay Bybee, and Steven Bradbury, who rendered lengthy legal opinions at OLC on the subject of enhanced interrogation techniques.

The prospect of OPR attorneys, with no particular expertise in national security matters, providing grounds for either criminal or professional ethics charges based on the detailed legal work of their colleagues has brought a torrent of complaints. Former Attorney General Michael Mukasey explained in a reporters' roundtable in December 2008,

> What I have said is that there is absolutely no evidence that anybody who rendered a legal opinion, either with respect to surveillance or with respect to interrogation policies, did so for any reason other than to protect the security of the country and in the belief that he or she was doing something lawful. In those circumstances, there is no occasion to consider prosecution and there is no occasion to consider pardon. If the word goes out to the contrary, then people are going to get the message, which is that if you come up with an answer that is not considered desirable in the future you might face prosecution, and that creates an incentive not to give an honest answer but to give an answer that may be acceptable in the future. It also creates some incentive in people not to ask in the first place.

Ronald Rotunda, a professor of law at Chapman Law School and a specialist in ethics, was consulted by the Justice Department on the OPR's investigation and cannot comment on its specifics. He does, however, express bewilderment that dozens of pages of legal analysis in which direction is carefully given as to what "may" or "might" constitute torture has now been converted into the basis for prosecution. "I can't imagine you would discipline someone who goes through everything methodically." He explains, "If you don't like the particular policies, then change the policies." He draws an analogy with the attacks on free speech during the Vietnam war and McCarthy eras in which lawyers with particular views were demonized and threatened with loss of their professional licenses.

Yet Holder pushes on with a highly charged political inquiry, to the delight and with the encouragement of liberal Democrats in Congress. News reports have revealed that a draft report based on OPR's investigation was reviewed and sharply criticized by Mukasey and his deputy, Mark Filip, in late 2008. One former Justice official with knowledge of the matter says, "It is safe to say they had a number of concerns about the draft report both as to the timing and the substance" of the work by OPR. There is, this official reports, "institutional unease by senior career people" at Justice that good faith legal work may place attorneys in peril. "The department won't be able to attract the best and the brightest. You really want lawyers who will give candid legal advice."

In looking at the totality of Holder's performance, the degree to which he has departed from his confirmation hearing rhetoric is glaring. Any demarcation between the Obama administration's political agenda and the impartial administration of justice is being eradicated. "Holder is the most political, partisan attorney general I can remember," says Frank Wolf. A former Justice Department official says that "the entire equilibrium of the department is out of whack." Lamar Smith, too, is dismayed. He says he has met with Holder several times. "You hear the words but there is a disconnect with the actions. We keep hoping for better."

Certainly that was the promise of the Obama administration. "Hope" and "change" got millions to the polls. But within half a year, the Justice Department is once again beset by allegations of impropriety and politicization. The difference of course is that the current congressional leadership no longer has any incentive to investigate and illuminate the department's misdeeds. "Ending the politicization of the Justice Department," we have learned, was nothing more than a campaign slogan. ♦

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Felix the Great

Why the ambivalence about Mendelssohn?

BY PAUL CANTOR

Mendelssohn plays for Queen Victoria and Prince Albert, 1842

C. ROHLING / HULTON ARCHIVE / GETTY IMAGES

This year marks the 200th anniversary of the birth of composer Felix Mendelssohn.

Since January the media have been filled with tributes to his artistic accomplishments, and most of them take the same form: assuring us that Mendelssohn really is a great composer. Why do all these commentators feel a need to come to Mendelssohn's defense? When we celebrated the 250th anniversary of Mozart's birth back in 2006, no one bothered to argue that he is a great composer; that was taken for granted. All the attention Mendelssohn is getting this year in the press and in concert halls around the world would seem to be sufficient evidence of his enduring reputation.

And yet there seems to be something odd about Mendelssohn's reputation, something not quite right, something that requires reassurance that he really deserves this bicentennial commemoration. I would put the paradox this way: Mendelssohn is the composer of a remarkable number of great works of music, but for some reason we hesitate to rank him among the great composers.

Consider the extraordinary range of his achievements in one form of music after another. His Violin Concerto in E minor ranks with Beethoven, Brahms, and Tchaikovsky at the pinnacle of the genre, and has become a rite of passage for all aspiring violinists. Of Mendelssohn's symphonies, the *Scottish* (#3) and the *Italian* (#4) are staples of the orchestral repertory, as is his *Hebrides* (or *Fingal's Cave*) *Overture*, which amounts to an early example of a tone poem. His incidental music to Shakespeare's *A Midsummer Night's Dream* magically captures the fairy atmosphere of the play and includes the famous wedding march, perhaps the most widely played piece of classical music ever written.

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In chamber music, Mendelssohn's output equals the achievement of all but the greatest composers. His Octet in E flat for Strings is undoubtedly the most impressive work ever produced in that genre (eat your hearts out Joachim Raff, Niels Gade, Max Bruch, and George Enescu). But if the competition here seems weak, one can turn to the area of chamber music where it is strongest, the string quartet, and Mendelssohn still stands out.

His six string quartets constitute a major contribution to the genre. Especially in the Op. 13 and Op. 80, he was among the first to appreciate and make use of what Beethoven was doing in his enigmatic late string quartets. Mendelssohn's Piano Trio #1 in D minor rivals Beethoven's Archduke Trio in popularity and has been recorded by just about every famous piano trio since the early 20th century, from Cortot-Thibaud-Casals, Rubinstein-Heifetz-Piatigorsky, and Istomin-Stern-Rose to the Beaux Arts Trio, Kalichstein-Laredo-Robinson, and Golub-Kaplan-Carr.

Although Mendelssohn's output in keyboard music does not match what he achieved in orchestral and chamber music, he did produce one masterpiece for piano, his *Variations sérieuses*. His *Songs Without Words* for solo piano contain many musical gems that demonstrate his ability to compete as a lyrical miniaturist with the likes of Chopin, Schubert, and Schumann.

Mendelssohn's reputation as a composer is probably weakest in the area of vocal music. Most people do not even know that he wrote operas. *The Uncle from Boston* and *The Marriage of Camacho* are not exactly household names, and are unlikely any time soon to displace *La Traviata* and *Tosca* from the operatic stage. But Mendelssohn did write many beautiful songs and choral compositions. His greatest achievement in the area of vocal music came in the oratorio. *Elijah*, with its rich, sonorous, and deeply moving part for its titular hero, and its dramatic choruses, can lay claim to being the best oratorio written since the days of Handel and Haydn. Indeed, it is one of the few works in the genre that comes close to the exalted level of the former's *Messiah* or the latter's *The Creation*.

With all these extremely popular and highly regarded compositions to his credit, why is Mendelssohn not automatically enrolled in the ranks of the great composers?

He was arguably the most celebrated composer in Europe during his lifetime, but soon after his death in 1847 his reputation began to take a turn for the worse when Richard Wagner attacked him in an essay called "Judaism in Music," first published in 1850. A serious anti-Semite, Wagner argued that Mendelssohn's Jewish origins prevented him from joining the ranks of the truly great composers:

> He showed us that a Jew can possess the greatest talents, the finest and most varied culture . . . and that none of those qualities can help him even once to move us to the depths of our being as we expect to be moved by art, and as we are when one of our own great artists simply opens his mouth to speak to us.

Wagner's anti-Semitic remarks can be left in the rubbish bin of history where they belong, but unfortunately he introduced a motif that has been picked up by musicologists ever since: that Mendelssohn merely had talent as a composer, not genuine greatness.

Typical is this remark in Alec Robertson's *Chamber Music* by Andrew Porter about the D minor Piano Trio I was just praising: "On paper . . . it seems vapid. What was deft in the Octet has become glib; what was romantic has turned sentimental. Invention sparks freely, but at a low voltage." Charles Rosen's important book, *The Romantic Generation*, contains one of the most insightful and provocative analyses of Mendelssohn's music I have read, but it takes a similar attitude toward his *Songs Without Words*: They "have a Mozartean grace without Mozart's dramatic power, a Schubertian lyricism without Schubert's intensity. . . . They charm, but they neither provoke nor astonish. It is not true that they are insipid, but they might as well be."

Why are many musicologists so negative in their appraisal of Mendelssohn?

To begin with, he made composing music seem too easy. He wrote his Octet when he was only 16 years old and the overture to *A Midsummer Night's Dream* one year later. To put this accomplishment in perspective, the composer generally regarded as the greatest musical prodigy of all time—Mozart—arguably did not write anything of comparable quality until he was a few years older. He was, for example, 21 when he wrote the first of his great piano concerti, #9 in E flat major (K.271).

Contemporaries like Goethe who heard both Mozart and Mendelssohn performing their own compositions as children tended to rate Mendelssohn as the greater prodigy. Even Rosen is willing to concede: "Not even Mozart or Chopin before the age of 19 could equal the mastery that Mendelssohn already possessed when he was only 16."

Mendelssohn's preternatural facility at musical composition means that he does not fit the image of the struggling creative genius we have inherited from the Romantic era. Beethoven torturing himself to perfect the development sections of his symphonies has become our model of the truly great composer. We want out great composers to *suffer* for their art.

Moreover, again in contrast to Beethoven, Mendelssohn never developed as a composer over time in the way we have come to demand of our musical giants. By the age of 16 he was already writing music as good as anything he was ever to produce, and although his artistic career inevitably had its ups and downs from then on, it does not shape itself into any clear pattern, especially not the upward curve we expect from the musical greats.

On the contrary, many musical experts see a downward curve in Mendelssohn's career. In perhaps the most famous comment ever made about Mendelssohn, the conductor Hans von Bülow is reputed to have said: "He began as a genius, and finished as a talent." Rosen reformulates this assessment in seemingly more positive, but ultimately just as damning terms: "If the early works of Mendelssohn, from the age of 15 to 21, remain more satisfying and impressive than the products of his later years, it is not that he lost any of his craft or even his genius.

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What he renounced was his daring."

For musicologists, something is missing in Mendelssohn. They like to tell stories about the great composers, and, like all good storytellers, they prefer a dramatic narrative. Unfortunately for Mendelssohn's reputation, his career does not supply a neat beginning, a middle, and an end. He arrived fully formed as a composer in his early teens, and his career simply stopped with his premature death at the age of only 38.

Mozart also unfortunately died young (at 35), but from a narrative standpoint, he had the good fortune to die in the middle of writing one of his greatest works, and as we know from *Amadeus*, what could be more dramatic than a composer expiring while laboring on a *Requiem*? Moreover, looking at late Mozart works like the *Requiem* (K.626), we have a sense that he was on the verge of new artistic breakthroughs just when his life was cut short. Mendelssohn died soon after composing his greatest choral work, *Elijah*, but it does not seem to point in any new directions. As great as *Elijah* is, if anything, it points back to Handel and Bach, to the great achievements of Baroque choral music.

It is a composer like Beethoven who best fits the narrative needs of musicologists. His life offers the requisite Aristotelian plot, with a beginning, a middle, and an end, or as musicologists like to put it: Early, Middle, and Late Beethoven. The Early Beethoven carries the art he learned from Haydn and Mozart to new heights of musical power, while he showcases his talents as a piano virtuoso. The Middle Beethoven finds his distinctive voice as a composer in works such as the Third and Fifth Symphonies and the Razumovsky Quartets, as he pushes the art of his predecessors to its limits and breaks out of them to explore new musical territory. The Late Beethoven inhabits a private universe of his own musical imagination, pushing musical forms themselves to their limits and beyond, especially in the fugal movements of his late quartets, such as the Op. 130 and Op. 131.

The "early/middle/late" formula recurs with remarkable frequency in musicologists' accounts of great composers. It fits the career of Arnold Schoenberg perfectly, for example. The Early Schoenberg of works such as *Verklärte Nacht*, the *Gurrelieder*, and the String Quartet #1 operates in the post-Wagnerian world where classical tonality is beginning to dissolve. The Middle Schoenberg of the String Quartet #2, the Five Orchestral Pieces, and *Pierrot Lunaire* opens up the world of atonality for the first time, in one of the most radical breaks in the history of music. Finally, the Late Schoenberg of the Orchestral Variations, the opera *Moses und Aron*, and the String Quartets #3 and #4 perfects his dodecaphonic or 12-tone method of composition, the vanguard of the serial music that was to dominate much of 20th-century composition.

Portrait by James William Childe, 1830

The case of Schoenberg helps to highlight the peculiarity of Mendelssohn's reputation among musicologists and music theorists. Most of them would call Schoenberg a great composer, while many deny Mendelssohn that status. This is so despite the fact that Mendelssohn has been and remains far more popular than Schoenberg with the music-listening public. In fact, in polls of the most *unpopular* classical composers, Schoenberg has long held, and seems to have secured for all time, the #1 spot.

I myself actually like much of Schoenberg's music, including all the works listed above. But despite decades of devoted performers trying to accustom audiences to Schoenberg's music, very few of his works have entered the active concert repertory, and those which have almost all come from his Early Period, when he still resembles more accessible and popular composers like Mahler and Strauss.

Clearly, academics are not allowing success with the listening public to factor into their evaluation of musical greatness. If anything, popularity like Mendelssohn's seems to work against a composer's reputation among academics. Particularly when they get to the 20th century, they pride themselves on championing precisely the composers the public has rejected. They view the public as too unsophisticated to appreciate the complexity of genuinely avant-garde composers, the composers who make music history. If Schoenberg ranks higher than Mendelssohn among musical academics, the primary reason is that Schoenberg fits their narrative needs better.

Indeed, Schoenberg's music comes as the culmination of the grand historical narrative musicologists wish to tell, which follows the line of Haydn-Mozart-Beethoven-Schubert-Schumann-Brahms-Wagner-Bruckner-Mahler-Strauss, and tells a story of the continuing exploration of larger and larger musical forms and remoter and remoter regions of tonality.

Ideologically, musicologists are generally historicists; they are interested in the history of music and thus obsessed with the concept of historical development. They do, of course, value individual pieces of great music, and have much to teach us about how to appreciate them. But they always want to arrange musical compositions into large narratives, specifically stories of development, the development from work to work within an individual composer's career, and then the larger story of the development from one composer to another.

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For these kinds of historical narratives, Schoenberg is ideal. He moves from work to work in his own career with a relentless developmental logic, and he is the key transitional figure in the climactic development of Western music from the chromaticism of Late Romanticism to the atonality of High Modernism.

Here is where Mendelssohn lets the musicologists down. In their view, his music is basically all Early and never makes it to Late. His career as a composer fails to follow any clear pattern of development, and, perhaps more important, although he can be placed at a particular moment of music history, he is not any kind of key transitional figure. All he offers is individual and isolated great works. What I suspect leads many musicologists to deny greatness to Mendelssohn is the feeling that one could remove him from the grand narrative of the history of Western music without much loss. The textbook I was assigned when I took a college course in the history of European music, Cannon, Johnson, and Waite, *The Art of Music*, mentions Mendelssohn only three times, and each time only in passing. (By contrast, they give Schoenberg almost half a chapter.)

This fascination with the career arcs of composers and their contributions to the history of music is the reason we celebrate events like the 200th anniversary of Mendelssohn's birth in the first place. But this interest in the composer rather than the composition may mislead us. We have already seen that Wagner's obsession with a biographical fact about Mendelssohn—his Jewish origins—led him foolishly to reject in principle the idea that his predecessor could be a great composer. As much as biography may add to our appreciation of music, it is ultimately an unreliable guide. Learning that Mendelssohn was only 16 when he composed the Octet may spice up our enjoyment of the piece as the work of a remarkable prodigy. But suppose, in some alternative musical universe, we learned that the Octet was written by an 80-year-old man on his deathbed. We would then undoubtedly marvel in a different way: that an octogenarian had managed to recapture such youthfulness in his last work. And yet the Octet would be the same marvelous piece of music whether it turned out to be composed by a 16-year-old or an 80-year-old.

In the end, it is the music itself that matters.

Musical anniversaries are fun to celebrate and provide a welcome opportunity to reevaluate beloved composers like Mendelssohn. I enjoyed listening again to much of his music while writing this article, and discovered a few works I had failed to appreciate before, such as his incidental music to Sophocles' *Antigone*. But anniversaries can have a bad effect if they make us focus too narrowly on a composer's place in music history and lose sight of the more fundamental issue, the intrinsic quality of his works.

Ultimately great music is great precisely because of its ability to stand above history and appeal to listeners of all ages. By that standard, many of Mendelssohn's works obviously deserve to be called great. He may not have changed the course of music history, but think of how much poorer that history would be without the likes of the Octet, the Violin Concerto, the *Italian* Symphony, and *Elijah*. Anyone who knows classical music understands what it means to call a piece of music "Mendelssohnian." Perhaps having his name made into an adjective is the truest measure of a composer's greatness. ♦

Counterintelligence

Winning battles but losing the war?

BY ANN MARLOWE

In the dim red glow of the crowded C130 transport aircraft, my soldiers' faces were guarded and withdrawn. We were minutes away from landing, and all expected a serious firefight before the day was out. Some retched from turbulence or checked their rifles.

And so on, for a few hundred words. Is David Kilcullen about to assault Falluja? No—Connecticut-sized East Timor, which was down to about 200,000 wretched inhabitants at the time the Australian army faced the fearsome challenge of "invading" it. Kilcullen, "one of the few Indonesian linguists in the force," took the "gamble" of walking over to the Indonesian airfield commander and asking for his handover of control. Looking up at the "continuous stream of aircraft stretching all the way to Australia," the commander sagely agreed.

The Accidental Guerrilla
Fighting Small Wars in the Midst of a Big One
by David Kilcullen
Oxford, 384 pp., $27.95

There are too many silly, pretentious, self-regarding moments like this in *The Accidental Guerrilla*, and they nearly overwhelm Kilcullen's often sensible observations, and undermine our confidence in his mainstream if not particularly original views of best-practice, population-centric counterinsurgency.

Even my eight weeks of embeds with the U.S. Army in Afghanistan make me wonder about writers who spend hundreds of words telling you about their flights on military aircraft—a trope in Kilcullen's account. On an Apache helicopter flight in Iraq, he loosens his safety harness and takes off his hel-

Ann Marlowe writes frequently about Afghanistan and is working on a book about David Galula and the origins of counterinsurgency theory.

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met and eye protection "to see better" after an IED explodes on the ground below—an example the reader might want to avoid, even when an IED hasn't gone off. But then, Kilcullen thinks body armor is "cowardly."

Another suspect device is his use of transliterated phrases from foreign languages—incredibly unimportant phrases from incredibly unimportant foreign languages such as Tetun: "*Mai ho ha'u* ("Come with me"), the boy said urgently." That was in 1999. Is Kilcullen really sure this is exactly how the boy phrased it? Why is it important that we know?

David Kilcullen (left) with the 10th Mountain Division, near Yusufiyah, Iraq, 2007

SPC. CHRIS MCCANN / U.S. ARMY

Then there's the interlarding of anthro jargon ("a common apical ancestor") and little ticks like "Usama" bin Laden and the inconsistent acknowledgment of the Arabic-Farsi *ain* (Saudi but Arab) which show more interest in giving the impression of erudition than in transliterating sensibly. I won't linger on the photographs, which either depict the attractive author or were taken by him (reminding us why professional photographers are important).

In fairness, when I interviewed David Kilcullen off the record in February 2007 he did not seem as self-regarding and mannered as he comes across in print. But the falseness that leaps off the page here isn't superficial.

He pays lip service to the importance of cultural knowledge, but one of his key arguments—that Iraq represented a "hybrid conflict" and "cannot be fully understood through a classical counterinsurgency lens"—is itself highly ahistorical. Kilcullen seems bent on aggrandizing the (admittedly formidable) difficulties of Iraq compared with prior conflicts, and his vanity makes one suspect that the reason is to point up just how much smarter he is than anyone who previously conducted counterinsurgency campaigns.

But that is not the way to learn from the past. Wasn't Vietnam also several wars in one, featuring "accidental guerrillas . . . foreign fighters . . . and regional nation-state rivalry"? On a simpler level, Algeria also qualifies as a hybrid conflict, with main force, foreign, and guerrilla fighters. In both conflicts, sophisticated counterinsurgency strategies were used.

The French in Algeria may take the prize for bold experimentalism—even walling off the border with Tunisia at great expense, an idea whose parallel iteration was proposed but rejected by American advisers in Vietnam. But the CAPS (Combined Action Platoon) Marines in Vietnam may have practiced the best counterinsurgency of any force in a postwar insurgency. The problem was that there were just 5,000 of them. Neither Kilcullen, nor for that matter General Petraeus's counterinsurgency field manual, FM 3-24, give them their due.

This is part of a broader tendency of contemporary writers on counterinsurgency to suggest that, until late 2006, there was little knowledge of it in the U.S. Army. But it just ain't so. And oddly enough, when Kilcullen does pay his respects to his predecessors, he chooses a mediocrity: the French journalist Bernard Fall, whose work is badly dated.

Kilcullen's very title—*The Accidental Guerrilla*—embodies a *bien-pensant* falsehood, that "we" create terrorists through our stupidity, naïveté, or cultural ignorance. (Learn how to say *Mai ho ha'u* and they won't want to kill us.) Kilcullen even argues that jihadi terrorism is partly explained as a backlash to globalization, which "most acknowledge" has "created a class of global haves and have-nots." This would be news to the millions, perhaps hundreds of millions, who have ridden the globalization wave out of poverty in India, China, Southeast Asia, and Latin America.

It is absurd to say that these places have benefited far less than "core regions of western Europe and North America." They have certainly benefited far more in percentage increases in GDP and standard of living. Going from a bicycle to a car is a much bigger leap than going from a sedan to an SUV. And this theory fails to explain why so many terrorists come not from desperately poor countries but from the middle classes of places like Saudi Arabia, Yemen, and Egypt.

"They fight us not because they seek our destruction but because they

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believe we seek theirs," Kilcullen says. Well, in May 2002, when Western troops had scarcely set foot in most of Afghanistan, I visited Shiberghan Prison in northern Afghanistan and spoke with some of the Taliban being held there. Not one of them came from anywhere around northern Afghanistan, where they had been captured in November 2001.

Nor would any of these young men have had any experience with Americans, much less been on the wrong side of an American gun. They were Pashtu speakers from southern Afghanistan or Pakistan. They had traveled quite some distance to fight fellow Muslims, though that description unduly dignifies the cruelties they inflicted on innocent civilians.

The "accidental terrorist" theory is wrong, but it will also be baleful if it comes to affect American policy. Kilcullen cowrote an op-ed piece in the *New York Times* last May arguing that U.S. drone strikes in Pakistan have been ineffectual, killing just 14 al Qaeda leaders but 700 civilians—"according to Pakistani sources." I would dearly love to know the precise source and methodology used in counting those 700 deaths, as well as Kilcullen's evidence for stating that "the drone war has created a siege mentality among Pakistani civilians."

My own experience tracking down statistics on civilian casualties from airstrikes in Afghanistan leads me to suspect that the real number of deaths is a fraction of 700, and that the Pakistani civilians feeling a state of siege are those fleeing the Taliban in Swat. I've written elsewhere in detail on the civilian casualties myth but suffice it to say that, in the first 300 days of 2008, in the 14 provinces of RC-E (regional command east) in Afghanistan, between 77 and 87 Afghans were slain accidentally by Coalition forces. Of these, only 22 were unequivocally innocent civilians; the other deaths occurred in two airstrikes in complicated circumstances.

Of course, any innocent deaths are a tragedy, but to put this in perspective, around 700 Afghan civilians were murdered by the Taliban between June 2007 and July 2008.

If Kilcullen's theory is correct, there ought to be "accidental pro-Americans" created by these Taliban slayings, which doesn't seem to be the case. Neither our relatively tiny number of accidental killings, nor the insurgents' much higher number of deliberate killings, have much to do with it. Some people just become jihadists for a variety of bad reasons, mainly having to do with the dysfunctional cultures that nourish them.

Near the end Kilcullen advises that "we should avoid any future large-scale, unilateral military intervention in the Islamic world." That sounds like a politician, not a strategist, talking, fighting the last war in the most predictable fashion. As Philip Bobbitt has pointed out, Islamism might not be our main enemy a few decades from now. The issue isn't "the Islamic world." It's countries—many of which are not Islamic—with undeveloped civil societies and no rule of law which tend to find themselves fighting insurgencies.

In the *Accidental Guerrilla* worldview, it's always Americans who fail to understand other cultures—never people from other cultures who need to grow up morally, taking responsibility for their actions, standing up to peer pressure, and acting according to an internalized ethical code. The Afghans of the Pashtun belt aren't going to progress very far, no matter how much money we spend in Afghanistan, unless they change their culture. Otherwise, in 20 years, they will still be a poor, illiterate people, living among the ruins of U.S.-built highways, military bases, and power plants they don't know how to maintain or repair. ♦

Lord Ha-Ha

The aesthete-aristocrat who was always in on the joke.

BY ANDREW STUTTAFORD

It is easier to describe the appearance of Gerald Tyrwhitt (1883-1950), the 14th, and strangest, Lord Berners, than the man himself. In his short story *The Love-Bird*, Osbert Sitwell gave his hero (a version of Berners) a "natural air of quiet, ugly distinction." Cecil Beaton thought that Berners resembled "a bald wax figure in a cheap clothes shop," while the cat-loving author Beverley Nichols was suitably feline, claiming that there was "a legend that nobody who has ever seen Gerald in his bath [was] ever quite the same again."

Lord Berners
Composer Writer Painter
by Peter Dickinson
Boydell Press, 214 pp., $47.95

Andrew Stuttaford, who writes frequently about cultural and political issues, works in the international financial markets.

The mismatch between this once-renowned aesthete's disappointing looks and his lifelong pursuit of beauty was too much fun to overlook.

Understanding the elusive, talented, and complex Lord Berners is altogether more difficult. He was a composer, a painter, and a writer, sometimes of merit, sometimes less so. He was a creative force who created, in the end, not that much. He was a prankster—on occasion tiresomely so—and a parodist, a satirist, a dryly laconic, sporadically cutting wit, a surrealist in a buttoned-up suit, a modernist in a country house, and he may (or may not) have had lunch with Hitler. An introvert who knew "everyone," Berners, a lover, appropriately, of

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masks, manipulated his own famously eccentric image so skillfully that in many respects his public persona was, three or four decades before Andy Warhol, both protective shield and his most successful, and possibly most enduring, artistic achievement.

Under the circumstances, it's fitting that this life of Berners by the British composer, pianist, and critic Peter Dickinson is not a conventional biography—for that, turn to Mark Amory's marvelous *Lord Berners: The Last Eccentric* (1998), essential reading for anyone looking to fill in the gaps left by Dickinson's patchy, distinctly nonnarrative approach—but a fascinating collage of impressions, recollections, and analysis of different aspects of this multifaceted individual's life, work, and career. It's impressively buttressed by a well-researched discography, a nicely reproduced selection of his paintings, some of his poems, a few unpublished writings, and even details of Berners's record collection.

Partly funded by the Berners Trust, this is Berners for completists. If you think that there's a touch of the Trekkie about the whole project, you'd be right. Dickinson "has been interested in Lord Berners for over thirty years." He has written a great deal about him, he arranged for an important revival concert of Berners's work, he was "prominently involved" in events to mark Berners's centenary, and he has done much else besides to focus attention on his lordship's career.

The book's intriguing core is made up of interviews conducted over the years with a clutch of ancients who had known Berners well, including Sir Harold Acton, the choreographer Sir Frederick Ashton, the widow of Britain's would-be Führer, Berners's chauffeur, and Robert ("mad boy") Heber-Percy, the much younger man with whom Berners lived for the final quarter of his life, despite the inconvenience posed by the mad boy marrying and, adding issue to injury, fathering a child.

The usual place to begin for those who agree that Berners deserves scholarly treatment of this sort is his music. Music was the art form that meant the most to him, and musically he was at the very least a minor talent from a country unable to boast much in the way of the major. He was dubbed the "English Satie" (Satie objected); he worked with Diaghilev and Balanchine. Stravinsky praised a youngish Berners as "a composer of unique talent," but it was a talent that was not exercised as much as it might have been: There was simply too much else that interested and entertained him.

In any event, as a rich man, Berners never *had* to produce anything. To be sure, he was an artist, but he wasn't confined to a garret—he owned a number of properties in England and abroad—nor did he starve: His table was legendary. Maybe this shrewd and remarkably (although largely self-taught) knowledgeable judge of good music just knew his limitations. (For what it's worth, his compositions do nothing for me, but then I'm no expert, nor am I an enthusiast for the serious music of that period. For those who are, I suspect that Dickinson makes a convincing case that Berners still matters.)

Lord Berners paints Penelope Betjeman's horse, 1938

FOX PHOTOS / GETTY IMAGES

As for his paintings, they are a mixed bunch, competent enough, pleasant enough, but with exceptions, not enough. Kindly comparisons have been made with Corot, but the reaction of the reliably unkind Evelyn Waugh to the news that a 1931 exhibition of Berners's work had sold well was, for once, only slightly unfair: "[This] shows what a good thing it is to be a baron."

By contrast, if we discount (and we must) *The Girls of Radcliff Hall* (1937), a high camp roman à clef, Berners's writing, at its best, merits more than a second look. That said, to claim, as some have done, that his *Far from the Madding War* (1941) ranks somewhere close to Waugh's *Put Out More Flags* is, notwithstanding moments of sharp insight and a good joke or two, a stretch. Berners's short stories lurch from sub-par Saki to interminable whimsy.

His memoirs, however, are a delight. Taken as a whole, *First Childhood*

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(1934) and *A Distant Prospect* (1945) are, with the posthumously published *Dresden* and *The Château de Résenlieu*, a charming, engrossing, and frequently very funny portrait of a late-Victorian/Edwardian upper-class upbringing that is too knowing to fit comfortably into the prelapsarian myth-making so typical of many of the reminiscences of that epoch, yet is made poignant by our sense, and Berners's sense, of the civilization that was so carelessly and yet so carefully destroyed in 1914.

Tellingly, as the 20th century ground relentlessly on, the outbreak of a second world war drove Berners to the edge of psychological collapse. Not even the ruins of what had already been lost were, he feared, to be spared destruction.

These characteristically slight, slyly profound autobiographical scraps also come as near as Berners ever came to really revealing something of himself, the aesthete who came of age in a society of hearties, the Englishman with, for his time and island, an astonishing appreciation of Europe far grander, and far finer, than anything now likely to emerge from the gimcrack European Union, the fabulist who understood the loveliness, the escape, and the magic of absurdity. Not for nothing did Nancy Mitford give the lightly fictionalized Berners who appears in *The Pursuit of Love* the name Lord Merlin, proprietor of a hallucinatory, fabulous estate where a "flock of multi-coloured pigeons tumbl[ed] about like a cloud of confetti in the sky" and the dogs wore diamonds.

With Lord Merlin, it was impossible to know where "jokes ended and culture began." And not for nothing had Berners himself conjured up a similarly resplendent menagerie (more or less, in reality the canine jewelry came from Woolworth's) for his own estate at Faringdon. PETA types may relax: The dye used on the pigeons was harmless. And with Lord Berners, too, the border between the art and the jokes was ill-defined and unpoliced, each in their own way aspects of a far greater composition.

Determined, perhaps, to secure his hero's place in the cultural pantheon, Dickinson seems almost embarrassed by the stunts, japes, and trickster exploits that underpin Berners's reputation, but prefers, instead, to downplay them in favor of the music which, "everybody agrees . . . was his most important single contribution."

Everybody? This misses the point that Mitford, if imperfectly, grasped: "Lord Berners" was Berners's finest creation, that greater composition, a brilliant, if accidental, anticipation of our era, and a gentle rebuke to the conventions, pretensions, and the horrors of his own.

And that's something for which Dickinson should give this most gifted of amateurs a little more credit. ♦

Cooks' Tour

The simple, practical guide for the amateur chef.

BY VICTORINO MATUS

Christopher Kimball knows what you are eating.

"I can tell you to a T what people cook at home and what they don't," says the founder and editor of *Cook's Illustrated*. "They say they want chicken, cheese, beef, chocolate." Who doesn't? But for the 16-year-old culinary magazine, knowing exactly what readers prefer is vital: Their feedback determines what makes it into each issue (grill-roasted turkey breast, for instance) and what doesn't.

Cook's Illustrated relies on some 10,000 "friends of *Cook*'s" to test recipes and let Kimball and his staff know what they enjoyed making, and what they didn't. (As it turns out, candy and seafood—with the exception of salmon and shrimp—are at the bottom of the list.) The most popular dishes are tested dozens of times by the magazine's chefs who refine the recipes using the most precise measurements before they appear in the next issue practically foolproof.

Here is, for example, a partial description for making "Best Charcoal Grill-Smoked Pork Chops."

> 5. Remove skewers from chops; tip chops onto flat side and brush surface with 1 tablespoon sauce. Transfer chops, sauce-side down, to hotter parts of grill (2 on each side) and cook, uncovered, until browned, 2 to 4 minutes. Brush top of each chop with 1 tablespoon sauce; flip and continue to cook on second side until browned and instant-read thermometer inserted into center of pork chop, but away from any bone, registers 140 to 145 degrees, 2 to 4 minutes longer. Remove chops from grill and allow to rest, tented with foil, 5 minutes. Serve, passing half cup reserved sauce separately.

In other words, *Cook's Illustrated* is an instructional magazine (and one that would no doubt meet the approval of Phil Hartman's Anal-Retentive Chef). Aside from the selection of recipes, several pages of each issue are devoted to cooking and cutting techniques. There's a tasting and equipment-test section in which different brands are blindly sam-

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pled by in-house staff and the consensus winner revealed.

What is the best chef's knife? Try the Forschner Fibrox 8-inch blade for only $24.95 (compared with, say, the Shun Ken Onion 8-inch chef's knife for $250). The best sweet pickle relish? Cascadian Farm organic comes in first (no yellow dye #5) but Heinz is a close second—"sparkles with a shocking glow-in-the-dark color, but won tasters over with its 'crunchy' texture and 'mustardy' flavor." There are no celebrity chef profiles or travelogues. There aren't even any four-color photographs—a still-life of fruits or vegetables usually adorns the cover.

But the thing most notably missing is advertising. Not a single ad appears in *Cook's Illustrated*, forcing the magazine to depend solely on the loyalty of its readers for revenue—something it seems to be doing rather well. At last count, *Cook's Illustrated* had a paid circulation of 910,000 (the cost is $19.95 for six issues or $5.95 each on newsstands). Cooksillustrated.com, whose content is mostly restricted, also has a separate paid online readership of 272,000.

A sister magazine called *Cook's Country*, which launched in 2005 and specializes in comfort-country cuisine like Kentucky Burgoo and lemon pudding cake, claims an additional 310,000 paid readers. Another publishing arm sells roughly one million cookbooks a year. And perhaps most important, *Cook's Illustrated* is featured front and center on *America's Test Kitchen*, the most-watched cooking show on public television, with 1.7 million viewers each week. (*Cook's Country TV* has its own weekly audience of 1.1 million.)

So despite a worsening economy that has spelled doom for many print publications, *Cook's Illustrated* is thriving. And as more people choose to save money by skipping restaurants and staying home to cook, the magazine is finding itself in a most enviable position.

How, then, did this anomaly in print journalism come into being?

Cook's Illustrated is the brainchild of Christopher Kimball, a 57-year-old entrepreneur originally from Westchester County, New York, who currently resides with his wife and children in Boston and has a weekend home (actually a hobby farm) in Vermont. Not long ago I visited Kimball at his office in the Boston suburb of Brookline Village (home to *Cook's Illustrated*, *Cook's Country*, and *America's Test Kitchen* studios) and asked him just how he arrived here.

Surprisingly, Kimball is *not* a graduate of the Culinary Institute of America or Johnson & Wales. He spent his undergraduate years at Columbia.

"Columbia during the horrible years," he points out. "Like all of 1969; it was awful. Grayson Kirk was the president, who was pretty worthless. It was not a good time to go to Columbia." He majored in primitive art and worked for free at the Congo exhibit inside the Natural History Museum. Kimball even considered earning a doctorate in Oceanic art, but repulsed by the "backstabbing" culture in academia, "decided that was stupid" and left to work for his stepbrother who ran a small publishing company. Later, he joined a business that specialized in seminars related to publishing and eventually taught a few of the seminars himself.

As more people choose to save money by skipping restaurants and staying home to cook, the magazine is finding itself in a most enviable position.

In 1980 Kimball started a magazine called *Cook's*: "I was seven years out of college at that time. It was the classic case of not knowing enough to realize it was a stupid idea." *Cook's* survived for three years before getting bought by the *New Yorker* and, ultimately, Condé Nast, which under S.I. Newhouse folded it, the subscribers absorbed by *Gourmet*.

In 1993 Kimball decided to try his hand once more at publishing a cooking magazine, but with one major difference: "I was goddamn sick and tired of trying to sell advertising up against *Gourmet*, *Food & Wine*, and *Bon Appétit*. I thought it was a really awful business formula." He vowed there would be no ads: "I decided that I was going to publish the magazine I wanted to publish, and if it worked, great; if it didn't, fine."

Needless to say, it worked. Based on direct-mail cards announcing that *Cook's* was back and better than ever (targeted to potential subscribers—the kind who read other food magazines and enjoy buying cookware), initial interest was strong. By the end of the first year paid circulation was 200,000 and growing.

Explains Kimball, "Our rule as publisher has been, Are you selling something to people that they can't get somewhere else? That's your hurdle. In our case, because of the test kitchen methodology, we are giving something to people they can't get somewhere else."

By 2001 readership had risen to 475,000, a number that would content many publishers. But Kimball decided to take *Cook's Illustrated* to the next level: public television. The idea behind *America's Test Kitchen*, now in its ninth season, is similar to that of the magazine: to demonstrate to the audience that only on *ATK* will you find the proper way to make fluffy buttermilk pancakes or Chicken Kiev or whatever else the reader surveys dictate.

The opening segment is known as the "bad food intro." Kimball, who plays host, announces what his chefs will be making—for instance, salsa. On a table he shows us one version that is store-bought and another based on a free online recipe. Both look less than appetizing (Kimball dubs these salsas "nightmare on tomato street"). Then he takes us into the kitchen where the demo takes place.

During an intermission, the host will drop by the Tasting Lab where editorial director Jack Bishop presents a variety of food brands and reveals what the in-house tasters voted best.

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One day it could be chocolate (Ghirardelli wins). Another day it could be breakfast sausages (Farmland, fully-cooked, is far superior to Jimmy Dean). Though Kimball does take part in a blind taste-test himself, he is not an official tester—and a good thing, too: "I hate spicy foods," the host confesses. "It overwhelms my palate. It just blows my palate away. Like peppercorns, I think I picked Durkee." (Kimball also despises chicken-fried steak: "The cream sauce . . . I don't get this, sorry.")

In a separate segment known as the Equipment Corner, Adam Ried, a longtime *Cook's Illustrated* editor, evaluates everything from nonstick skillets to cookbook holders. At least half the time, a cheaper alternative to Le Creuset or Wüsthof can be found, though this was not the case with drip-coffeemakers. According to Kimball, "The only one we liked was the Technivorm at $235. We just said, 'Don't buy drip-coffemakers except this one, or get a French press.'" There are also science interludes where the viewer learns why certain steps are taken in a recipe (such as adding half-and-half to scrambled eggs—something to do with protein—in order to reduce wateriness).

Like its print counterpart, *America's Test Kitchen* is a no-nonsense, straightforward production bearing more resemblance to Julia Child's *The French Chef* than most shows on the Food Network. In *Heat: An Amateur's Adventures as Kitchen Slave, Line Cook, Pasta-Maker, and Apprentice to a Dante-Quoting Butcher in Tuscany*, author Bill Buford described the trend at FN as putting

> a premium on presentation rather than on knowledge and tend[ing] to have intimate-seeming camera close-ups of foods, as though objects of sexual satisfaction. The skin-flick feel was reinforced by a range of heightened effects, especially amplified sounds of frying, snapping, crunching, chewing, swallowing. There seemed always to be a tongue, making small, wet, bubbly tongue sounds. The "talent" (also known as a "crossover" personality, usually a woman with a big smile and no apron) was directed to be easy with her tongue and use it conspicuously—to taste food on a spoon, say, or work it around a batter-coated beater, or clean the lips with it.

You will not see Bridget Lancaster or Julia Collin Davison doing any of this. These charming cohosts of *America's Test Kitchen* (both professional chefs) keep their coats buttoned and aprons firmly tied, and they do not moan in ecstasy after chewing on Key lime bars.

Christopher Kimball himself is no Jamie Oliver (the Naked Chef). At a lanky 6'2" Kimball was once described by David Carr of the *New York Times* as having teeth "not perfectly ready for prime time" while Stephen Metcalf in *Slate* poked fun at him as resembling "a grown-up version of Encyclopedia Brown" with "granny glasses" and "a doofy bow tie."

Still, Metcalf's article was entitled "Sexy Food Nerds," and as the longtime food critic for the *Washington Post* Phyllis Richman told me, Kimball has "made the unfashionable fashionable." To which Kimball says with a smile, "Unwittingly."

> We haven't consciously done anything. We just stood up and did what we do. That's us. There's no pretense about it. So, if over time, being a geeky bow tie-wearer has some cultural momentum, that's fine. But that's just a function of enduring 10 years.

Unlike Emeril Lagasse, Kimball does not use catchphrases like "kick it up a notch" and "Bam!" In fact, his overall reaction to finished dishes tends to be muted. "If I'm effusive to the point of being unbelievably effusive," he explains, "I think that doesn't do it. I think [the audience would] rather see somebody taste the food and have a real reaction to it. Then they get to trust your reaction. . . . If every time you taste the food and say, 'This is the best thing I ever had,' everyone's going to go, 'well, that's just nonsense.'"

Julia Collin Davison, Christopher Kimball

DANIEL J. VAN ACKERE

Chef and bestselling author Michael Ruhlman says that "as more people cook, more people want real information, not overly styled food porn or shows where the host's rack is more engaging than the food. The folks at *Cook's Illustrated* are giving you real information, and visually it looks like it's going to look in your kitchen."

David Mack, *ATK*'s vice president

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of marketing, elaborates on this: "I don't think that we are much like any of the shows that are on the Food Network. I mean, we're more serious in terms of the information we're trying to communicate and we're less about entertainment and more about trying to provide real cooking information, about making a specific recipe."

To Mack, however, the real threat to *Cook's Illustrated* and *ATK* is not the Food Network but free content on the Internet:

> As more and more people look for information online, and they sit down for dinner, and they're like, I want to grill chicken breasts, you do a Google search for grilled chicken breasts, up comes dozens of sites, and that's your competition. It's about communicating to consumers that it's not about the quantity of recipes out there. It's about the quality. And it's about the fact that if you're willing to spend, whether it's $30, $40, $50 on ingredients and invest a half-hour to an hour of your time to cook dinner, that you want a recipe that's going to turn out, and that's what we offer consumers.

(Mack once did cameos for the show both as a waiter at an Italian restaurant and as a pizza delivery boy. Much to his relief, he has not been asked back in several years.)

But can absolute devotion to the needs and desires of the reader also be a hindrance, say, to broadening one's gastronomic horizons? In an incisive article last year for *Boston* magazine, Jane Black joked about being extremely proficient with roast chicken thanks to *Cook's Illustrated*: "Not just a roast chicken, but Easy Roast Chicken, Pan-Roasted Chicken, Grill-Roasted Whole Chicken, Crispy Roast Lemon Chicken, Crisp-Skin High-Roast Butterflied Chicken, and, in 2008 alone, Stovetop Roast Chicken, Herbed Roast Chicken, Crisp Roast Chicken, and French Chicken in a Pot."

She isn't making this up. Based on the surveys, readers of *Cook's Illustrated* really do like their roast chicken, and want to make it just right. And Kimball is more than happy to oblige them. But as Black notes, "amateur gastronomy is no longer just about recipes. It's political. It's adventure. It's sexy. It's a *lifestyle*. We seek out Vermont cheeses and Japanese *yuzu*, and top most everything with microgreens—so long as they're in season."

So what about that *yuzu*? Does Kimball have even the slightest interest?

"No," he says emphatically.

JOHN BURGOYNE / COOK'S ILLUSTRATED

> I have no interest, zero interest in talking about things our readers are not going to actually do. What's the point? Unless we give people stuff they really want to use, we wouldn't be in business. What I've said to the people here is, my theory is, when it comes to renewal time, if someone will remember two or three recipes they made over the course of the year that were really great, you get the renewal. And if they haven't made anything from the magazine or it didn't turn out okay or wasn't really something they wanted, you won't. So, no. I have no interest in playing with new ingredients or new recipes unless they make sense in the typical kitchen. I don't care. What's the point? This is not a hobby magazine. This is about cooking. So let's talk about what people really do at home.

When it comes to discussing the business model of *Cook's Illustrated* and the overall parent corporation known as Boston Common Press (a multimillion-dollar operation that he partly owns), Kimball is very much like his products—straightforward and no-nonsense. But he can also be funny in a deadpan way. As I watched Kimball on the set of a grilling episode (which filled the entire office complex with the smell of barbecue all day) the host had to explain how to handle a grilled Italian chicken in so many ways that he jokingly feared saying not only to turn the chicken and press the chicken, but choke it, too.

He rides a Harley. He loves to hunt rabbits and deer. And he eats homemade pork sausage from the pigs on his farm. This month Kimball will serve as a guest lay minister at his Methodist church in Vermont, and gets to deliver one sermon: "I always end up talking about science or cooking."

Kimball should also be giving talks on how to save print journalism. "If you put out something people want to read, you can get people to subscribe to it," he says assuredly. "The *Boston Globe* has to figure out what they can provide that no one else can provide. So the obvious thing is they moved a lot of coverage to local. They cut down on their international and national. But they got to figure out more than that."

Indeed, the editors of the *Globe* (and everyone else) need to convince online users to suddenly pay for content that, until now, has been free. And they need to convince readers that they are the only source for the information they seek—and that it is worth the price.

If only the information these readers were seeking had to do with making a perfectly grill-roasted turkey breast. ♦

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Hurts to Laugh

A comic faces death, and life gets complicated.

BY JOHN PODHORETZ

The tears of a clown are among the least interesting tears shed on this earth. Why should other people care that a person who seeks to generate laughter might himself be a needy puppy who only wants love? What makes a funny person interesting is the fact that he is funny. His wounds are no different from anyone else's. Besides, if all that were needed to produce a funny person was a terrible upbringing and the feeling of being unloved, Stalin would have been a laff riot.

Funny People
Directed by Judd Apatow

UNIVERSAL PICTURES

Here is what the writer-director Judd Apatow reveals in his astringent and fine new picture, *Funny People*: People who are funny for a living are not, for the most part, nice. They are cruel. They are cold. Their subject is human weakness, and they know it better than anyone. They zero in on the weaknesses of others, toy with them, exploit them, and then use them for their own purposes.

Perhaps they too were once wounded, but that history does not prevent them from spending a lifetime inflicting wounds on their own. Worse still, it is a burden for a funny person to be saddled with a sense of responsibility and a belief in treating others as you would be treated. Without the killer instinct, the well-meaning funny person may be doomed to failure.

Apatow tells two stories in *Funny People*. The first concerns Ira Wright (Seth Rogen), a struggling comedian who works at a Los Angeles supermarket and tells uncomfortable jokes about himself rather than aiming his bile at others. The second is about George Simmons (Adam Sandler), a onetime standup who has become one of Hollywood's biggest stars by making lousy high-concept comedies that closely resemble Sandler's worst movies. *Merman* is a slam on Sandler's *Little Nicky*; *The Re-Do* is Apatow's parody of Sandler's *Click*. The fact that Sandler agreed to make fun of himself in this way says something very pleasing about him. To describe this as his best performance is to understate; Sandler does things as an actor in *Funny People* that no one would have thought him capable of doing before this movie.

As the movie begins, George learns he is going to die from a rare blood disease. And we learn, very soon after, that he is an unpleasant, selfish, and thoughtless man. But funny. Very funny. He can barely speak a sentence that isn't clever. But his humor comes almost entirely at the expense of Ira, who becomes his personal assistant after George decides to begin performing stand-up again to find an outlet for the terror and disappointment he feels at his own death sentence.

He calls his employee "Shmira," a combination of Ira's name and the word "schmuck." He writes a song about how Ira's last name is actually Wiener. He pounds and pounds on Ira, who is alternately abashed, humiliated, and amused by his boss. George is paying him more money than he has ever made in his life and whom he cannot tell off. Every time Ira thinks they are becoming friends, George reminds him instantly that his job is to fetch.

Ira is not funny the way George is. He's too halting, too careful, too concerned with the feelings of others. George is disgusted with Ira's comedy because of its self-deprecating manner; this is not a way to get women, the never-married George complains. Ira does a bit about how, when other men brag about having sex with women in the most vulgar terms, he talks about being friends.

"I friended that woman all night long," he says. "I friended the s— out of her."

Ira is a decent person, and after being the only person to share the secret of George's condition, finally convinces his boss to tell his friends and family. George does so largely because it allows him to reestablish contact with Laura (Leslie Mann), his long-ago girlfriend who is now married with two kids and living near San Francisco.

"She's the one that got away," George says. "Two people have that—lovers and serial killers."

Sobbing, Laura tells George that he is the love of her life and that her husband cheats on her just as George did when they were together. This gives George an opening to revisit his greatest mistake and attempt to rectify it. It is at this point that *Funny People* takes a surprising and risky turn that is part bedroom farce, part moral drama.

Seth Rogen, who has played major roles in the three movies Apatow has directed (this one, *Knocked Up*, and *The 40-Year-Old Virgin*) once said that "we make extremely right-wing movies with extremely filthy dialogue." *Funny People* is the most right-wing of these films because it offers a devastating portrayal of a man who stands outside the borders of a conventional bourgeois life, and suffers mightily because of it. George's pain is not interesting, but the circumstance of his condition is. Ira's pain is interesting because he earns our interest. And the movie that contains them is the most interesting American film so far this year. ♦

John Podhoretz, editor of Commentary, *is* THE WEEKLY STANDARD*'s movie critic.*

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"Deutsche Lufthansa AG, Europe's second-biggest airline, offered revised concessions to European Union regulators to allay antitrust concerns about its plan to purchase Austrian Airlines AG."
—**Bloomberg.com**, *July 28, 2009*

Parody

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Lufthansa Annexes Austrian Air; Czech Airlines Could Be Next

German carrier expands über alles

By Nikki Tait and James Wilson

As the rest of the world's commercial jetliners watched in silence, Lufthansa successfully carried out its bid to take over ailing Austrian Airlines. "Lufthansa and Austrian Airlines have so much in common," says Lufthansa CEO Wolfgang Mayrhuber, who was actually born in Austria. "Both carriers fly similar routes and both have flight crews that speak German. It just makes sense." And while some Austrian executives have expressed dismay (Lufthansa will reportedly force them into early retirement), others have greeted the takeover with open arms. "Finally, we will have order!" exclaimed one Austrian pilot.

Meanwhile, the chief executive of rival Air France has said that trying to stop Lufthansa's actions is just not worth it. "We've been down that road before," says Pierre-Henri Gourgeon. "The majority of our personnel are close to retirement age and not interested in picking a fight with Lufthansa. Besides, our flight routes are quite secure." But with Lufthansa entering into alliances with Alitalia and Japan Airlines—known as Co-Prosperity Mileage Partners—those flight routes seem less secure than ever.

On the move

'One Crew, One Airline, One Pilot!' Is Austrian move just the beginning?

Aerospace analysts are also concerned that Lufthansa may be eyeing Czech Airlines. "Like the Austrians, there are a good number of Germans who work for Czech Airlines, at least on the western Bohemian routes," says Mr. Mayrhuber, who recently complained that German employees of Czech Airlines have been targets of harassment, though the claims have yet to be proven.

If Lufthansa were to take over Czech Airlines, rival carriers insist they would require assurances in writing from Mr. Mayrhuber that his company would fully cease and desist from pursuing other airlines. "I assure you that will not happen," said British Airways CEO Willie Walsh. "Herr Mayrhuber explained to me that his burgeoning airline simply needed more air space." Still, other flight experts fear that will not be the end of it. Some have even speculated that Lufthansa is considering a partnership with Russian airliner Aeroflot in a bid to take over routes currently operated by LOT, the official airline of Pol

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Meet the Porsche Panzer

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